

IN THE SENATE

SENATE BILL NO. 1123

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO PROSTITUTION; AMENDING CHAPTER 56, TITLE 18, IDAHO CODE, BY THE
2 ADDITION OF A NEW SECTION 18-5618, IDAHO CODE, TO PROVIDE FOR PROPERTY
3 SUBJECT TO FORFEITURE AND TO DEFINE TERMS; AMENDING CHAPTER 56, TITLE
4 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5619, IDAHO CODE,
5 TO PROVIDE THAT AN INVENTORY OF SEIZED PROPERTY SHALL BE MADE; AMEND-
6 ING CHAPTER 56, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
7 18-5620, IDAHO CODE, TO PROVIDE THAT A FORFEITURE REQUEST SHALL BE FILED
8 AND TO PROVIDE A REBUTTABLE PRESUMPTION; AMENDING CHAPTER 56, TITLE 18,
9 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5621, IDAHO CODE, TO PRO-
10 VIDE FOR THE PRESERVATION OF SEIZED PROPERTY; AMENDING CHAPTER 56, TI-
11 TLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5622, IDAHO CODE,
12 TO PROVIDE FOR A PROCESS OF THIRD PARTY PROCEEDINGS; AMENDING CHAPTER
13 56, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5623, IDAHO
14 CODE, TO PROVIDE FOR THE DISPOSITION OF PERSONAL PROPERTY AND TO ESTAB-
15 LISH RIGHTS OF A THIRD PARTY; AMENDING CHAPTER 56, TITLE 18, IDAHO CODE,
16 BY THE ADDITION OF A NEW SECTION 18-5624, IDAHO CODE, TO PROVIDE FOR THE
17 DISPOSITION OF REAL PROPERTY AND TO ESTABLISH RIGHTS OF A THIRD PARTY;
18 AMENDING CHAPTER 56, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
19 TION 18-5625, IDAHO CODE, TO PROVIDE FOR PROPORTIONALITY OF PROPERTY IN
20 DISPOSITION; AMENDING CHAPTER 56, TITLE 18, IDAHO CODE, BY THE ADDITION
21 OF A NEW SECTION 18-5626, IDAHO CODE, TO PROVIDE FOR THE AUTHORITY OF
22 THE ATTORNEY GENERAL IN DISPOSITION OF PROPERTY; AMENDING CHAPTER 56,
23 TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5627, IDAHO
24 CODE, TO PROVIDE A BAR ON INTERVENTION FOR A PARTY CLAIMING AN INTEREST
25 IN PROPERTY; AMENDING CHAPTER 56, TITLE 18, IDAHO CODE, BY THE ADDITION
26 OF A NEW SECTION 18-5628, IDAHO CODE, TO PROVIDE FOR THE JURISDICTION OF
27 COURTS AND DEPOSITION PROCEDURES; AMENDING CHAPTER 56, TITLE 18, IDAHO
28 CODE, BY THE ADDITION OF A NEW SECTION 18-5629, IDAHO CODE, TO PROVIDE
29 PROCEDURES TO DISPOSE OF PROPERTY; AMENDING CHAPTER 56, TITLE 18, IDAHO
30 CODE, BY THE ADDITION OF A NEW SECTION 18-5630, IDAHO CODE, TO PROVIDE
31 FOR THE FORFEITURE OF SUBSTITUTE PROPERTY; AND AMENDING CHAPTER 56, TI-
32 TLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5631, IDAHO CODE,
33 TO PROVIDE THAT THIS CHAPTER SHALL BE CONSTRUED TO EFFECTUATE ITS REME-
34 DIAL PURPOSES.
35

36 Be It Enacted by the Legislature of the State of Idaho:

37 SECTION 1. That Chapter 56, Title 18, Idaho Code, be, and the same is
38 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
39 ignated as Section 18-5618, Idaho Code, and to read as follows:

40 18-5618. PROPERTY SUBJECT TO FORFEITURE. Property subject to criminal
41 forfeiture under this chapter includes:

1 (1) "Real property" including things growing on, affixed to or found on
2 the land; and

3 (2) "Tangible and intangible personal property" including rights,
4 privileges, interests, claims and securities.

5 SECTION 2. That Chapter 56, Title 18, Idaho Code, be, and the same is
6 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
7 ignated as Section 18-5619, Idaho Code, and to read as follows:

8 18-5619. INVENTORY. Any peace officer of this state seizing property
9 subject to forfeiture under the provisions of this chapter shall cause a
10 written inventory to be made and shall maintain custody of the same until all
11 legal actions have been exhausted. A copy of the inventory shall be sent,
12 within five (5) days of the seizure, to the director of the Idaho state po-
13 lice. Upon completion of the forfeiture action, pursuant to this chapter, a
14 final inventory shall be made that indicates the disposition of the seized
15 property, and a copy of that inventory shall also be sent to the director of
16 the Idaho state police.

17 SECTION 3. That Chapter 56, Title 18, Idaho Code, be, and the same is
18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
19 ignated as Section 18-5620, Idaho Code, and to read as follows:

20 18-5620. FORFEITURE REQUEST -- REBUTTABLE PRESUMPTION. Property sub-
21 ject to criminal forfeiture under the provisions of this chapter shall not
22 be ordered forfeited unless the attorney general or the appropriate prose-
23 cuting attorney has filed a separate allegation within the criminal proceed-
24 ing seeking forfeiture of specific property as described in section 18-5612,
25 Idaho Code. The attorney general or appropriate prosecuting attorney shall
26 file, within fourteen (14) days of the filing of the criminal information or
27 indictment, a separate part II forfeiture request and notice with the trial
28 court.

29 There is a rebuttable presumption that any property of a person subject
30 to the provisions of section 18-5612, Idaho Code, is subject to forfeiture
31 under this chapter if the state of Idaho establishes by a preponderance of
32 the evidence that:

33 (1) The property was acquired by a person during the period of the vi-
34 olation of either section 18-5609 (inducing a person under eighteen years
35 of age into prostitution) or section 18-5602 (procurement), Idaho Code, or
36 within a reasonable time after such violation; and

37 (2) There was no likely source for such property other than the viola-
38 tion of either section 18-5609 (inducing a person under eighteen years of age
39 into prostitution) or section 18-5602 (procurement), Idaho Code.

40 SECTION 4. That Chapter 56, Title 18, Idaho Code, be, and the same is
41 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
42 ignated as Section 18-5621, Idaho Code, and to read as follows:

43 18-5621. PRESERVATION OF PROPERTY -- WARRANT OF SEIZURE -- PROTECTIVE
44 ORDERS. (1) Upon application of the state of Idaho, the court may enter a
45 restraining order or injunction, require the execution of a satisfactory

1 performance bond or take any other action to preserve the availability of
2 property described in section 18-5612, Idaho Code, for forfeiture under the
3 provisions of this chapter upon the filing of an indictment or information
4 charging a violation of either section 18-5609 (inducing a person under
5 eighteen years of age into prostitution) or section 18-5602 (procurement)
6 for which criminal forfeiture may be ordered and alleging that the property
7 with respect to which the order is sought would, in the event of conviction,
8 be subject to forfeiture under this chapter.

9 (2) The state may request the issuance of a warrant authorizing the
10 seizure of property subject to forfeiture under this chapter in the same man-
11 ner as provided for a search warrant. If the court determines that there is
12 probable cause to believe that the property to be seized would, in the event
13 of conviction, be subject to forfeiture and that an order under subsection
14 (1) of this section may not be sufficient to assure the availability of the
15 property for forfeiture, the court shall issue a warrant authorizing the
16 seizure of such property by the appropriate law enforcement agency upon such
17 terms and conditions as the court shall deem proper.

18 (3) The court may, upon application of the state of Idaho, enter such
19 appropriate restraining orders or injunctions, require the execution of
20 satisfactory performance bonds, appoint receivers, conservators, ap-
21 praisers, accountants or trustees, or take any other action to protect the
22 interest of the state of Idaho in the property subject to forfeiture. Any
23 income accruing to or derived from property subject to forfeiture under this
24 chapter may be used to offset ordinary and necessary expenses to the property
25 that are required by law, or that are necessary to protect the interests of
26 the state of Idaho or third parties.

27 SECTION 5. That Chapter 56, Title 18, Idaho Code, be, and the same is
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
29 ignated as Section 18-5622, Idaho Code, and to read as follows:

30 18-5622. INSTITUTION OF PROCEEDINGS -- THIRD PARTIES. Upon the filing
31 of a part II forfeiture request pursuant to section 18-5620, Idaho Code, or
32 in the event of seizure pursuant to a warrant of seizure, or upon entry of
33 an order of forfeiture pursuant to section 18-5612, Idaho Code, the attor-
34 ney general or appropriate prosecuting attorney shall, if appropriate, in-
35 stitute proceedings pursuant to section 18-5623 or 18-5624, Idaho Code, or
36 both, within five (5) days of such event.

37 SECTION 6. That Chapter 56, Title 18, Idaho Code, be, and the same is
38 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
39 ignated as Section 18-5623, Idaho Code, and to read as follows:

40 18-5623. PERSONAL PROPERTY -- RIGHTS OF THIRD PARTIES. (1) Within five
41 (5) days of any of the events specified in section 18-5622, Idaho Code, no-
42 tice, including a copy of the request for forfeiture, shall be given to each
43 co-owner or party in interest who has or claims any right, title or interest
44 in any such personal property according to one (1) of the following methods:

45 (a) Upon each co-owner of or party in interest in a titled motor vehi-
46 cle, aircraft or other conveyance, by mailing notice by certified mail
47 to the address of each co-owner and party in interest as given upon the

1 records of the appropriate department of state or federal government
2 where records relating to such conveyances are maintained;

3 (b) Upon each secured party and assignee designated as such in any UCC-1
4 financing statement on file in an appropriate filing office covering
5 any personal property sought to be forfeited, by mailing notice by
6 certified mail to the secured party and the assignee, if any, at their
7 respective addresses as shown on such financing statement; or

8 (c) Upon each co-owner or party in interest whose name and address is
9 known, by mailing notice by registered mail to the last known address of
10 such person.

11 (2) Within twenty (20) days after the mailing of the notice, the
12 co-owner or party in interest may file a verified answer and claim to the
13 property described in the notice.

14 (3) If a verified answer is filed within twenty (20) days after mailing
15 of the notice, the forfeiture proceeding against all co-owners and parties
16 in interest who have filed verified answers shall be set for hearing before
17 the court without a jury on a day not less than sixty (60) days after the mail-
18 ing of the notice; and the proceeding shall have priority over other civil
19 cases.

20 (a) At the hearing, any co-owner or party in interest who has a veri-
21 fied answer on file may show by competent evidence that his interest in
22 the titled motor vehicle, aircraft or other conveyance is not subject to
23 forfeiture because he could not have known in the exercise of reasonable
24 diligence that the titled motor vehicle, aircraft or other conveyance
25 was being used, had been used or was intended to be used for the purposes
26 described in section 18-5612, Idaho Code.

27 (b) A co-owner or claimant of any right, title or interest in the prop-
28 erty may prove that his right, title or interest, whether under a lien,
29 mortgage, security agreement, conditional sales contract or otherwise,
30 was created without any knowledge or reason to believe that the property
31 was being used, had been used or was intended to be used for the purpose
32 alleged.

33 (i) In the event of such proof, the court shall order that portion
34 of the property or interest released to the bona fide or innocent
35 co-owner, purchaser, lienholder, mortgagee, secured party or con-
36 ditional sales vendor.

37 (ii) If the amount due to such person is less than the value of the
38 property, the property may be sold at public auction or in another
39 commercially reasonable method by the attorney general or appro-
40 priate prosecuting attorney. If sold at public auction, the at-
41 torney general or appropriate prosecuting attorney shall publish
42 a notice of the sale by at least one (1) publication in a newspaper
43 published and circulated in the city, community or locality where
44 the sale is to take place at least one (1) week prior to sale of the
45 property. The proceeds from such sale shall be distributed as fol-
46 lows in the order indicated:

47 1. To the bona fide or innocent co-owner, purchaser, condi-
48 tional sales vendor, lienholder, mortgagee or secured party
49 of the property, if any, up to the value of his interest in
50 the property;

1 2. The balance, if any, in the following order:

2 (A) To the attorney general or appropriate prosecut-
3 ing attorney for all expenditures made or incurred in
4 connection with the sale, including expenditure for
5 any necessary repairs, storage or transportation of
6 the property, and for all expenditures made or incurred
7 by him in connection with the forfeiture proceedings
8 including, but not limited to, expenditures for wit-
9 nesses' fees, reporters' fees, transcripts, printing,
10 traveling and investigation.

11 (B) To the law enforcement agency of this state that
12 seized the property for all expenditures for travel-
13 ing, investigation, storage and other expenses made or
14 incurred after the seizure and in connection with the
15 forfeiture of any property seized under the provisions
16 of this chapter.

17 (C) The remainder, if any, to the crime victim's com-
18 pensation account as established in section 72-1009,
19 Idaho Code.

20 (4) Notwithstanding any other provision of this section, upon being
21 satisfied that the interest of a co-owner or claimant should not be subject
22 to forfeiture because they neither knew nor should have known that the per-
23 sonal property was being used or had been used for the purposes alleged, or
24 that due to preexisting security interests in such property there is no equ-
25 ity that may be forfeited, the attorney general or appropriate prosecuting
26 attorney may release the property to the co-owner, holder of the security
27 interest or other claimant.

28 (5) In any case, the attorney general or appropriate prosecuting attor-
29 ney may, within thirty (30) days after order of forfeiture, pay the balance
30 due to the bona fide lienholder, mortgagee, secured party or conditional
31 sales vendor and thereby purchase the property for use to enforce this chap-
32 ter.

33 SECTION 7. That Chapter 56, Title 18, Idaho Code, be, and the same is
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
35 ignated as Section 18-5624, Idaho Code, and to read as follows:

36 18-5624. REAL PROPERTY -- RIGHTS OF THIRD PARTIES. (1) Real property
37 subject to forfeiture under the provisions of this chapter may be seized by
38 the attorney general or appropriate prosecuting attorney upon determining
39 that a parcel of property is subject to forfeiture, by filing a notice of
40 seizure with the recorder of the county in which the property or any part
41 thereof is situated. The notice must contain a legal description of the
42 property sought to be forfeited; provided however, that in the event the
43 property sought to be forfeited is part of a greater parcel, the attorney
44 general or appropriate prosecuting attorney may, for the purposes of this
45 notice, use the legal description of the greater parcel. The attorney gen-
46 eral or appropriate prosecuting attorney shall also send by certified mail a
47 copy of the notice of seizure to any persons holding a recorded interest or of
48 whose interest the attorney general or appropriate prosecuting attorney has
49 actual knowledge. The attorney general or appropriate prosecuting attorney

1 shall post a similar copy of the notice conspicuously upon the property and
2 publish a copy thereof once a week for three (3) consecutive weeks immedi-
3 ately following the seizure in a newspaper published in the county. The
4 co-owner or party in lawful possession of the property sought to be forfeited
5 may retain possession and use thereof and may collect and keep income from
6 the property while the forfeiture proceedings are pending.

7 (2) In the event of a seizure pursuant to subsection (1) of this sec-
8 tion, a request for forfeiture shall be filed with the trial court within
9 the time limit imposed by section 18-5620, Idaho Code. The request shall be
10 served in the same manner as complaints subject to Idaho rules of civil pro-
11 cedure on all persons having an interest in the real property sought to be
12 forfeited.

13 (3) Notwithstanding any other provision of this section, upon being
14 satisfied that the interest of a co-owner or claimant should not be subject
15 to forfeiture because they neither knew nor should have known that the real
16 property was being used or had been used for the purposes alleged, or that due
17 to preexisting security interests in such property there is no equity that
18 may be forfeited, the attorney general or appropriate prosecuting attorney
19 may release the property to the co-owner, holder of the security interest or
20 other claimant.

21 (4) Within twenty (20) days of the mailing of the notice, the co-owner
22 or party in interest may file a verified answer and claim to the property de-
23 scribed in the notice.

24 (5) If a verified answer is filed within twenty (20) days after mailing
25 of the notice, the forfeiture proceeding against all co-owners and parties
26 in interest who have filed verified answers shall be set for hearing before
27 the court without a jury on a day not less than sixty (60) days after the mail-
28 ing of the notice; and the proceeding shall have priority over other civil
29 cases.

30 (a) A co-owner or claimant of any right, title or interest in the real
31 property sought to be forfeited may prove that his right, title or in-
32 terest, whether under a lien, mortgage, deed of trust or otherwise, was
33 created without any knowledge or reason to believe that the real prop-
34 erty was being used or had been used for the purposes alleged;

35 (b) Any co-owner who has a verified answer on file may show by competent
36 evidence that his interest in the property sought to be forfeited is not
37 subject to forfeiture because he could not have known in the exercise of
38 reasonable diligence that the real property was being used or had been
39 used in any manner in violation of the provisions of section 18-5612,
40 Idaho Code.

41 (6) In the event of such proof, the court shall order the release of the
42 interest of the co-owner, purchaser, lienholder, mortgagee or beneficiary.

43 (a) If the amount due to such person is less than the value of the real
44 property, the real property may be sold in a commercially reasonable
45 manner by the attorney general or appropriate prosecuting attorney.
46 The proceeds from such sale shall be distributed as follows in the order
47 indicated:

48 (i) To the innocent co-owner, purchaser, mortgagee or benefi-
49 ciary of the real property, if any, up to the value of his interest
50 in the real property;

1 (ii) The balance, if any, in the following order:

2 1. To the attorney general or appropriate prosecuting at-
 3 torney for all expenditures made or incurred in connection
 4 with the sale, including expenditure for any necessary re-
 5 pairs or maintenance of the real property, and for all expen-
 6 ditures made or incurred in connection with the forfeiture
 7 proceedings including, but not limited to, expenditures for
 8 witnesses' fees, reporters' fees, transcripts, printing,
 9 travel, investigation, title company fees and insurance
 10 premiums.

11 2. The remainder, if any, to the crime victim's compensation
 12 account as established in section 72-1009, Idaho Code.

13 (b) In any case, the attorney general or appropriate prosecuting attor-
 14 ney may, within thirty (30) days after the order of forfeiture, pay the
 15 balance due to the innocent co-owner, purchaser, lienholder, mortgagee
 16 or beneficiary and thereby purchase the real property for use in the en-
 17 forcement of this chapter.

18 SECTION 8. That Chapter 56, Title 18, Idaho Code, be, and the same is
 19 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 20 ignated as Section 18-5625, Idaho Code, and to read as follows:

21 18-5625. PROPORTIONALITY. In issuing any order under the provisions
 22 of this chapter, the court shall make a determination that the property, or
 23 a portion thereof in the case of real property, was actually used in viola-
 24 tion of the relevant provisions of this chapter. The size of the property
 25 forfeited shall not be unfairly disproportionate to the size of the property
 26 actually used in violation of the provisions of this chapter.

27 SECTION 9. That Chapter 56, Title 18, Idaho Code, be, and the same is
 28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 29 ignated as Section 18-5626, Idaho Code, and to read as follows:

30 18-5626. AUTHORITY OF THE ATTORNEY GENERAL. With respect to property
 31 ordered forfeited under the provisions of this chapter, the attorney general
 32 or appropriate prosecuting attorney is authorized to:

33 (1) Restore forfeited property to victims of a violation of relevant
 34 provisions of this chapter, or take any other action to protect the rights of
 35 innocent persons that is in the interest of justice and that is not inconsis-
 36 tent with the provisions of this chapter;

37 (2) Compromise claims arising under this chapter;

38 (3) Award compensation to persons providing information resulting in a
 39 forfeiture under this chapter; and

40 (4) Take appropriate measures necessary to safeguard and maintain
 41 property ordered forfeited under this chapter pending its disposition.

42 SECTION 10. That Chapter 56, Title 18, Idaho Code, be, and the same is
 43 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 44 ignated as Section 18-5627, Idaho Code, and to read as follows:

1 18-5627. BAR ON INTERVENTION. Except as provided in sections 18-5623
2 and 18-5624, Idaho Code, no party claiming an interest in property subject to
3 forfeiture under this section may:

4 (1) Intervene in a trial or appeal of a criminal case involving the for-
5 feiture of such property under the provisions of this chapter; or

6 (2) Commence an action at law or equity against the state of Idaho con-
7 cerning the validity of his alleged interest in the property subsequent to
8 the filing of an indictment or information alleging that the property is sub-
9 ject to forfeiture under this chapter.

10 SECTION 11. That Chapter 56, Title 18, Idaho Code, be, and the same is
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
12 ignated as Section 18-5628, Idaho Code, and to read as follows:

13 18-5628. JURISDICTION -- DEPOSITIONS. The district courts of the
14 state of Idaho shall have jurisdiction over:

15 (1) Property for which forfeiture is sought that is within the state at
16 the time the action is filed; or

17 (2) The interest of a co-owner or interest holder in the property if
18 the co-owner or interest holder is subject to personal jurisdiction in this
19 state.

20 In order to facilitate the identification and location of property de-
21 clared forfeited after the entry of an order declaring property forfeited to
22 the state of Idaho, the court may, upon application of the state of Idaho, or-
23 der that the testimony of any witness relating to the property forfeited be
24 taken by deposition and that any designated book, paper, document, record,
25 recording or other material not privileged be produced at the same time and
26 place, in the same manner as provided for the taking of depositions under
27 rule 27 of the Idaho rules of civil procedure.

28 SECTION 12. That Chapter 56, Title 18, Idaho Code, be, and the same is
29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
30 ignated as Section 18-5629, Idaho Code, and to read as follows:

31 18-5629. DISPOSITION OF PROPERTY. On the motion of a party and after
32 notice to any persons who are known to have an interest in the property and
33 an opportunity to be heard, the court may order property that has been seized
34 for forfeiture sold, leased, rented or operated to satisfy an interest of any
35 interest holder who has timely filed a proper claim or to preserve the in-
36 terests of any party. The court may order a sale or any other disposition of
37 the property if the property may perish, waste, be foreclosed on or other-
38 wise be significantly reduced in value or if the expenses of maintaining the
39 property are or will become greater than its fair market value. If the court
40 orders a sale, the court shall designate a third party or state property man-
41 ager to dispose of the property by public sale or other commercially reason-
42 able method and shall distribute the proceeds in the following order of pri-
43 ority:

44 (1) Payment of reasonable expenses incurred in connection with the
45 sale.

46 (2) Satisfaction of exempt interests in the order of their priority.

1 (3) Preservation of the balance, if any, in the actual or constructive
2 custody of the court in an interest-bearing account, subject to further pro-
3 ceedings under the provisions of this chapter.

4 When property is forfeited under this chapter, the attorney general or
5 appropriate prosecuting attorney may:

6 (a) Retain it for official use; and/or

7 (b) Sell that which is not required to be destroyed by law and which is
8 not harmful to the public, pursuant to section 18-5623 or 18-5624, Idaho
9 Code.

10 SECTION 13. That Chapter 56, Title 18, Idaho Code, be, and the same is
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
12 ignated as Section 18-5630, Idaho Code, and to read as follows:

13 18-5630. FORFEITURE OF SUBSTITUTE PROPERTY. If any of the property de-
14 scribed in section 18-5612, Idaho Code, as a result of any act or omission of
15 the defendant:

16 (1) Cannot be located upon the exercise of due diligence;

17 (2) Has been transferred or sold to, or deposited with, a third party;

18 (3) Has been placed beyond the jurisdiction of the court;

19 (4) Has been substantially diminished in value; or

20 (5) Has been commingled with other property that cannot be divided
21 without difficulty;

22 the court shall order the forfeiture of any other property of the defendant
23 up to the value of any property described in section 18-5612, Idaho Code.

24 SECTION 14. That Chapter 56, Title 18, Idaho Code, be, and the same is
25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
26 ignated as Section 18-5631, Idaho Code, and to read as follows:

27 18-5631. CONSTRUCTION. The provisions of this chapter shall be liber-
28 ally construed to effectuate its remedial purposes.