

The New York Times

April 9, 2015

Bill to End Civil Forfeiture in New Mexico Awaits Move by Governor Martinez

By SHAILA DEWAN

In March, New Mexico's divided Legislature voted unanimously to end the contentious practice of civil forfeiture, which lets law enforcement agencies take property suspected of ties to crime even if no charges are ever filed.

Despite widespread bipartisan support for the measure, law enforcement strongly opposes it. And now lawmakers are waiting to see whether Gov. Susana Martinez, a Republican and a former district attorney, will sign it. She has been silent about her intentions, but if she does not sign the bill by noon on Friday, it will die.

"We passed along to the governor information that we think, when she reads it, will be clear that we're not hurting law enforcement," said Brad Cates, a lawyer for the House Judiciary Committee and the architect of the law. Mr. Cates's position carries particular weight because he was, in the 1980s, the director of the federal asset forfeiture program, but now says civil forfeiture distorts police priorities and should be abolished.

Critics say it amounts to policing for profit, since police departments and prosecutors share in the proceeds from whatever they seize, including cash and cars. Hundreds of law enforcement agencies depend on civil forfeiture proceeds for a significant portion of their budgets.

To regain their property, owners must frequently pay court fees and lawyers and prove they are innocent of wrongdoing. In some jurisdictions, they appear not before a judge, but before a prosecutor with wide discretion to keep the property or charge the owner steep fees for its return. Elsewhere, the police have used minor drug sales as a pretext to forfeit valuable assets such as houses.

Members of Congress have floated legislation to rein in widely chronicled abuses of civil forfeiture, and in January Attorney General Eric H. Holder Jr. imposed severe limits on a federal forfeiture program that has shared billions of dollars' worth of seizures with local law enforcement agencies.

Several states, including Texas, Georgia, Maryland, Minnesota and Virginia, have bills that would restrict or regulate civil forfeiture, according to the Institute for Justice, a libertarian group that has led a public relations and legal campaign against the practice.

In New Mexico, pressure mounted after *The New York Times* reported late last year on a video in which the Las Cruces city attorney described police officers trying to seize a late-model Mercedes-Benz and called Philadelphia's asset forfeiture program "a gold mine."

The bill also followed a case in which the American Civil Liberties Union of New Mexico successfully fought the seizure of \$17,000 from a man and his son on a road trip to Las Vegas.

The bill before Governor Martinez would end civil forfeiture but preserve criminal forfeiture, in which property is subject to forfeit if the owner is convicted of a crime. It would require proceeds to go to the state's general fund, not to individual law enforcement agencies.

The state Department of Public Safety has warned that the bill "directly jeopardizes" drug investigations by removing both the incentive for interagency cooperation and the influx of forfeiture cash that is normally used to fund operations. It would, the department said in an analysis of the bill, result in "less training, less resources, less equipment, and a reduction of criminal investigations," but would increase requests for state funding. A stream of law enforcement groups have said they will request a veto.

Groups like the A.C.L.U., Drug Policy Alliance and Institute for Justice have campaigned for the bill, and Grover G. Norquist, the anti-tax conservative, has written an open letter asking the governor to sign it. Opponents have kept a low profile. "It's revealing that law enforcement says nothing in a public hearing, because it's clear that New Mexico residents oppose seizure for salaries and policing for profit," said Lee McGrath, a lawyer at the Institute for Justice.

Paul Gessing, the president of the Rio Grande Foundation, a small conservative think tank in Albuquerque, said that vetoing the bill might hurt Ms. Martinez if she were looking to run for higher office. "This may be one of those rare circumstances where politics may lead someone to do what I think is the best thing morally and policy-wise."