

24-4-113 Proportionality.

- (1)
 - (a) A claimant's interest in property that is used to facilitate a crime, excluding contraband, is not subject to forfeiture under any provision of state law if the forfeiture is substantially disproportionate to the use of the property in committing or facilitating a violation of state law and the value of the property.
 - (b) Forfeiture of property used solely in a manner that is merely incidental and not instrumental to the commission or facilitation of a violation of law is not proportional.
- (2)
 - (a) In determining proportionality, the court shall consider:
 - (i) the conduct giving cause for the forfeiture;
 - (ii) what portion of the forfeiture, if any, is remedial in nature;
 - (iii) the gravity of the conduct for which the claimant is responsible in light of the offense; and
 - (iv) the value of the property.
 - (b) If the court finds that the forfeiture is substantially disproportional to the conduct for which the claimant is responsible, it shall reduce or eliminate the forfeiture, as it finds appropriate.
- (3) The prosecuting attorney has the burden to demonstrate that any forfeiture is proportional to the conduct giving rise to the forfeiture.
- (4) In all cases the court shall decide questions of proportionality.
- (5) Forfeiture of any proceeds is proportional.

Enacted by Chapter 394, 2013 General Session