



**Problem-Oriented Guides for Police  
Response Guides Series  
No. 7**



# Asset Forfeiture

by  
John L. Worrall

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Center for  
**Problem-Oriented Policing**



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# Asset Forfeiture

John L. Worrall

This project was supported by Cooperative Agreement Number 2006-CK-WX-K003 by the Office of Community Oriented Policing Services, U.S. Department of Justice. The opinions contained herein are those of the author and do not necessarily represent the official position of the U.S. Department of Justice. References to specific agencies, companies, products, or services should not be considered an endorsement by the author or the U.S. Department of Justice. Rather, the references are illustrations to supplement discussion of the issues.

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ISBN: 1-932582-90-8

November 2008





## About the Response Guide Series

The *Response Guides* are one of three in the series of *Problem-Oriented Guides for Police*. The other two are the *Problem-Specific Guides* and *Problem-Solving Tools*.

*Problem-Oriented Guides for Police* summarize knowledge about how police can reduce the harm caused by specific crime and disorder problems by preventing problems and improving overall incident response. They are not guides to investigating offenses or handling specific incidents. Neither do they cover the technical details about how to implement specific responses. The guides are written for police—of whatever rank or assignment—who must address the specific problems the guides cover. The guides will be most useful to officers who are capable of the following:

- They understand basic problem-oriented policing principles and methods.
- They can look at problems in-depth.
- They are willing to consider new ways of doing police business.
- They understand the value and the limits of research knowledge.
- They are willing to work with other community agencies to find effective solutions to problems.

Publications in the Response Guide Series summarize knowledge about whether police should use certain responses to address various crime and disorder problems, and about what effects they might expect. Each guide offers the following:

- Describes the response
  - Discusses the various ways police might apply the response
  - Explains how the response is designed to reduce crime and disorder
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- Examines the research knowledge about the response
- Addresses potential criticisms and negative consequences that might flow from use of the response
- Describes how police have applied the response to specific crime and disorder problems, and with what effect.

The *Response Guides* are used differently than the Problem-Specific Guides. Ideally, police should begin all strategic decision-making by first analyzing the specific crime and disorder problems they are confronting, then using the analysis results to devise particular responses. Certain responses are so commonly considered and have such potential to help address a range of specific crime and disorder problems that it makes sense for police to learn more about what results they might expect from them.

Readers are cautioned that the *Response Guides* are designed to *supplement* problem analysis, not to *replace* it. Police should analyze all crime and disorder problems in their local context before implementing responses. Even if research knowledge suggests that a particular response has proved effective elsewhere, that does not mean the response will be effective *everywhere*. Local factors matter in choosing which responses to use.

Research and practice have further demonstrated that, in most cases, the most effective overall approach to a problem is one that incorporates several different responses. A single response guide is unlikely to provide sufficient information on which to base a coherent plan for addressing crime and disorder problems. Some combinations of responses work better than others. How effective a particular response is depends partly on what other responses police use to address the problem.

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The *Response Guides* emphasize effectiveness and fairness as the main considerations police should take into account when choosing responses, but recognize that they are not the only considerations. Police use particular responses for reasons other than, or in addition to, whether they will work or will not work, and whether they are deemed fair or not fair. Community attitudes and values, and the personalities of key decision-makers, sometimes mandate different approaches to addressing crime and disorder problems. Some communities and individuals prefer enforcement-oriented responses, whereas others prefer collaborative, community-oriented, or harm-reduction approaches. These guides will not necessarily alter those preferences, but are intended to better inform them.

The COPS Office defines community policing as “a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.” These guides emphasize problem-solving and police-community partnerships in the context of addressing specific public safety problems. For the most part, the organizational strategies that can facilitate problem-solving and police-community partnerships vary considerably and discussion of them is beyond the scope of these guides.

The guides in the *Response Guides Series* have drawn on research findings and police practices in the United States, the United Kingdom, Canada, Australia, New Zealand, the Netherlands, and Scandinavia. Even though laws, customs and police practices vary from country to country, it is apparent that the police everywhere experience common problems. In a world that is becoming increasingly interconnected, it is important that police be aware of research and successful practices beyond the borders of their own countries.

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Each guide is informed by a thorough review of the research literature and reported police practice, and each guide is peer-reviewed anonymously by a line police officer, a police executive, and a researcher before publication. The review process is managed independently by the COPS Office, which solicits the reviews.

The COPS Office and the authors encourage you to provide feedback on this guide and to report on your own agency's experiences dealing with a similar problem. Your agency may have addressed a problem effectively using responses not considered in these guides and your experiences and knowledge could benefit others. This information will be used to update the guides. If you wish to provide feedback and share your experiences, e-mail the information to [askCOPSRC@usdoj.gov](mailto:askCOPSRC@usdoj.gov).

For more information about problem-oriented policing, visit the Center for Problem-Oriented Policing online at [www.popcenter.org](http://www.popcenter.org). The web site offers free online access to the following:

- *The Response Guides Series*
  - The companion *Problem-Specific Guides* and *Problem-Solving Tools Series*
  - Special publications on crime analysis and on policing terrorism
  - Instructional information about problem-oriented policing and related topics
  - An interactive problem-oriented policing training exercise
  - An interactive *Problem Analysis Module*
  - Online access to important police research and practices
  - Information about problem-oriented policing conferences and award programs.
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## Acknowledgments

The *Response Guides* for Police are produced by the Center for Problem-Oriented Policing, whose officers are Michael S. Scott (Director), Ronald V. Clarke (Associate Director), and Graeme R. Newman (Associate Director). While each guide has a primary author, other project team members, COPS Office staff, and anonymous peer reviewers contributed to each guide by proposing text, recommending research, and offering suggestions on matters of format and style.

The project team that developed the guide series comprised Herman Goldstein (University of Wisconsin Law School), Ronald V. Clarke (Rutgers University), John E. Eck (University of Cincinnati), Michael S. Scott (University of Wisconsin Law School), Rana Sampson (Police Consultant), and Deborah Lamm Weisel (North Carolina State University.)

Members of the San Diego, California; National City, California; and Savannah, Georgia, police departments provided feedback on the guides' format and style in the early stages of the project.

Cynthia Pappas and Debra Cohen, Ph.D., oversaw the project for the COPS Office and research for the guides was conducted at the Criminal Justice Library at Rutgers University by Phyllis Schultze. Katharine Willis edited this guide.

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## **Introduction**

Designed to weaken the economic foundations of the illicit drug trade, asset forfeiture laws allow for the seizure (and eventual forfeiture) of property connected with criminal activity.<sup>1</sup> Supporters of the practice see it as an essential law enforcement tool.<sup>2</sup> Forfeiture has also helped generate considerable revenue for police agencies.

Today there are literally hundreds of federal and state forfeiture laws,<sup>3</sup> and such laws continue to be enacted at near record levels. This response guide explains the advantages and disadvantages to police of using asset forfeiture as a response to various crime problems. It also reviews several of the possible novel uses of forfeiture.

To be of practical use, this guide also examines legal arrangements from state to state and discusses steps agencies can take to improve the prospects of receiving forfeiture proceeds. It concludes with a brief how-to guide that agencies should consider when deciding to launch an asset forfeiture program.

## **Target Audience**

The target audience for this response guide is, first and foremost, any law enforcement official who is contemplating starting an asset forfeiture program in his or her agency. This guide also serves as a refresher for those currently engaged in the practice. Finally, researchers and others who are interested in the issues surrounding asset forfeiture should find this guide helpful.

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## **The Need for Forfeiture**

For many years, law enforcement agencies around the nation have faced shrinking budgets.<sup>4</sup> Police administrators have been forced to develop creative budgeting strategies, such as securing federal grants and partnering with community foundations.<sup>5</sup> Though it is an enforcement tool, asset forfeiture can assist in the budgeting realm by helping to offset the costs associated with fighting crime. Doing what it takes to undermine the illicit drug trade is expensive and time-consuming. Forfeiture can help agencies target these difficult problems, sometimes without the need to seek additional outside resources to offset their costs.



## Origins and Varieties of Forfeiture

Traditionally, forfeiture actions have proceeded upon the fiction that the inanimate objects can be guilty of wrongdoing. Simply put, the theory has been that if the object is “guilty,” it should be held forfeit.<sup>6</sup> This can shift the attention from the people responsible for the crime (as with a criminal prosecution) to the property that was derived from or used to facilitate the crime.

### Criminal Forfeiture

When criminal forfeiture is used, it accompanies a criminal conviction. For example, if a high-profile drug trafficker is convicted of controlled substance law violations, the convicted’s property that was connected with such activity may be forfeited. Criminal forfeiture is, by some accounts,<sup>7</sup> less common than civil forfeiture, mainly because of the burden of proof in criminal cases, namely proof beyond a reasonable doubt.<sup>8</sup> Criminal forfeiture is a sentencing option only if the statute used to convict the offender also provides for forfeiture. Also, when a third party has an interest in the property subject to forfeiture, ancillary hearings are often held to ascertain the nature of that interest and make adjustments as deemed necessary.

### Civil Forfeiture

Civil forfeiture has seen its share of controversy not just because the property rather than its owner is targeted (illustrative cases include *United States v. One Mercedes 560 SEL* and *United States v. One Parcel of Land at 508 Depot Street*<sup>9</sup>) but because the standard of proof is considerably lower. In a civil forfeiture action, the government need prove only by a preponderance of the evidence that the property in question was used or obtained illegally, thus making it subject to forfeiture. Civil forfeiture proceedings are independent of

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§There are four steps to an administrative forfeiture: (1) Notice of the forfeiture action must be served on all potentially interested parties; (2) Notice of the forfeiture proceeding must be published in a newspaper of general circulation; (3) If no claim opposing the forfeiture is filed during the statutorily required period of actual or published notice, the item is declared forfeit by the administrative agency; and (4) If a claim opposing forfeiture is filed, then the administrative forfeiture proceeding halts and the matter is converted into a judicial forfeiture action (Edgeworth, 2004).

criminal proceedings, and it has been estimated that as many as 90 percent of civil forfeitures are not accompanied by criminal charges,<sup>10</sup> either intentionally or due to insufficient evidence to support a criminal prosecution.

Civil forfeiture can occur via three mechanisms:

1. Summary forfeiture occurs when property is summarily seized. Property subject to summary forfeiture is typically contraband, such as illegal narcotics and drug paraphernalia.
2. Administrative forfeiture is usually commenced against property valued at less than \$500,000, or against cash of any value. Administrative proceedings are conducted by the seizing agency; the government initiates a forfeiture action and will take ownership of the property if no one steps forward to contest the forfeiture. § Real property is not subject to administrative forfeiture, even if it is valued at less than \$500,000. Probable cause is the requisite standard in administrative forfeiture (as it is roughly analogous to preponderance of evidence).
3. Civil judicial forfeiture proceedings occur before a judge. It is akin to a trial. If the value of the property in question exceeds \$500,000 (or a claim of ownership is filed or real property is involved), this is the mechanism of choice.

The authors of one study<sup>11</sup> found that the assets sought in civil-judicial proceedings were most commonly (48.6 percent) real property. More specifically, of the cases where investigations were proactive (e.g., a drug bust was planned in advance), the assets were primarily real property. Of the cases where investigations were reactive (such as when a traffic stop gave rise to forfeiture), most assets were monetary instruments. The researchers also studied the values, both real and estimated, of the assets in civil-judicial forfeiture cases. They found that the real property was the most valuable, followed by currency, conveyances, and other property, respectively.

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## Theories of Forfeiture

There are four forfeiture theories. Property is subject to forfeiture if it is (1) contraband; (2) the proceeds of criminal activity; (3) used to facilitate criminal activity; and (4) connected to a criminal enterprise.

### Forfeiture of Contraband

Contraband property is illegal to possess and, as such, is subject to forfeiture. No one can assert a legal interest in contraband property, so any property interest in it cannot exist. Again, this is why summary forfeiture of contraband is acceptable.<sup>12</sup>

Closely connected to contraband is so-called “derivative contraband.”<sup>13</sup> To use a drug example, derivative contraband might be scales used to weigh substances before sale. Such property is lawful to possess but is subject to forfeiture because it is used to facilitate crime. It cannot be summarily forfeited, however. Due process protections apply because one can assert legal interest in such property.

### Forfeiture of Proceeds

The ability to target the proceeds of criminal activity is what makes forfeiture particularly attractive from a police standpoint. The proceeds of criminal activity can be several, including “...all interest, dividends, income, or property derived from the original illegal transaction..., including the appreciation in the value of the property.”<sup>14</sup> Proceeds can be targeted for forfeiture if they are connected to criminal activity *in general*. That is, there is no requirement that the proceeds be obtained *directly* from an illegal act. For example, if an individual sells drugs for cash, uses the cash to buy a car, sells the car, and then uses the money to contribute to a down payment on a home, the latter could be considered proceeds—but only the portion purchased with illicit funds.<sup>15</sup>

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Although the ability to target proceeds of criminal activity is attractive, it can be difficult for the government to prove a connection between the property sought and the initial criminal act. The current requirement is that the government prove a “substantial connection” between the property to be forfeited and the criminal activity from which it is considered a proceed. A general suspicion of criminal activity is not sufficient to take an asset forfeiture case forward.

### **Facilitation Forfeiture**

Forfeiture extends beyond criminal proceeds to include property that is used to facilitate, or carry out, criminal activity. Such forfeitures can include property that “is used or intended to be used *in any manner or part* to commit or facilitate the commission of a violation...”<sup>16</sup> A facilitation forfeiture is sometimes called an instrumentality forfeiture, meaning the property targeted for forfeiture was instrumental to the commission of the crime. An example is a car used to transport illegal drugs for sale.

### **Enterprise Forfeiture**

Enterprise forfeiture targets an offender’s interest in any enterprise involved in criminal activity. Federal law provides that “... in the case of a person convicted of engaging in a continuing criminal enterprise..., the person shall forfeit, in addition to any property described in (1) proceeds or (2) instrumentality, any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.”<sup>17</sup> This is sweeping language because it reaches the offender’s entire interest in a criminal enterprise. An example is the case of *United States v. Cauble*,<sup>18</sup> where the government forfeited a partnership interest in a ranch on the theory that the defendant used it for his drug smuggling operation. This type of forfeiture is relatively rare and tends to be limited to racketeering cases.<sup>19</sup>

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## Forfeiture Laws and Sharing

Forfeiture laws engender considerable controversy because many of them have sharing provisions. Federal law and most state laws provide that a certain amount of forfeiture proceeds can go back to the police agency (or agencies) that set the wheels in motion. There is also considerable collaboration between federal officials and local police, for reasons this section summarizes.

The amounts of money that move between state governments and the federal level are significant. In FY 2007, for example, more than \$1.5 billion<sup>20</sup> was deposited from the states into the U.S. Department of Justice Assets Forfeiture Fund. However, this figure does not reflect the total amount of proceeds forfeited, because, as the following section explains, pursuing federal forfeiture is not always attractive to local agencies.

§The Comprehensive Crime Control Act of 1984 (Public Law 98-473) established the U.S. Department of Justice Assets Forfeiture Fund (see Appendix A for other relevant federal forfeiture laws). The fund is set up to receive the proceeds from forfeiture resulting from the Justice Department law enforcement agencies (e.g., the FBI, DEA, ATF). Another fund, housed in the Department of the Treasury, is the Treasury Forfeiture Fund (31 U.S.C. § 9703[a]). Treasury Department law enforcement agencies (e.g., the Secret Service) participate in this fund.

### Federal Law

When cash is forfeited, it is transferred to the appropriate asset forfeiture fund.§ Personal and real property is sold at auction, and, once sales costs are deducted, remaining proceeds are deposited into the fund. In FY 2007, more than \$71 million in real property was sold, the proceeds from which were placed in the Justice Department's Assets Forfeiture Fund. Federal agencies can also retain personal property, such as certain conveyances, for law enforcement purposes. In FY 2007, 465 items valued at more than \$6.7 million were placed into law enforcement use from the Justice Department's Assets Forfeiture Fund.<sup>21</sup> Forfeiture fund monies are also retained to care for real property, pay informants, and fulfill other obligations related to property (such as paying off lien holders).



§The federal share is 20 percent if all the preseizure activity was conducted by a state or local agency. This does not necessarily mean, however, that 80 percent automatically goes to such agencies. The share is based on the number of agencies involved and on each agency's degree of participation in an investigation. This is usually determined by the number of hours contributed by personnel.

§§A request for adoption form is at [www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm02288.htm](http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm02288.htm)

## Equitable Sharing

Numerous federal statutes<sup>22</sup> provide that local police agencies can team up with federal law enforcement officials in a practice known as adoptive forfeiture. An adoptive forfeiture occurs when local police officials effectively hand a case over to federal officials (e.g., Drug Enforcement Administration, which then passes it off to the U.S. Attorney's Office in the case of civil-judicial forfeiture). A key restriction is that the property in question is forfeitable under federal law. Proceeds from successful adoptive forfeitures are managed by the appropriate federal forfeiture fund and, important, as much as 80 percent of adoptive forfeiture proceeds can be returned to the initiating state or local police agency (or agencies).§

## The Adoptive Forfeiture Process

The process begins with a request for adoption,§§ which is then reviewed by the appropriate federal agency. If a forfeiture is adopted, the process continues to unfold as follows:

An agreement is signed, in which the local law enforcement agency promises the proceeds “shall be used for law enforcement purposes in accordance with the statutes and guidelines that govern equitable sharing” and also that they will be used as the local agency specified in the application it submitted requesting equitable sharing in that case. The agreement also states that “the misuse or misapplication of shared resources is prohibited” and will subject the local agency to sanctions.<sup>23</sup>

When the proceeds from an adoptive forfeiture are shared with the participating local agency (or agencies), this is known as equitable sharing. Equitable sharing proceeds are considerable. During FY 2007, for example, more than \$400 million was paid out by the U.S. Justice Department's Assets Forfeiture Fund to state and local police agencies.

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Despite the possible windfall that can result from an equitable sharing payout, there are a few restrictions on how the proceeds can be spent. First, payments are intended to enhance and supplement police resources and activities. Second, property and funds awarded must be used in accordance with specific federal guidelines: “Permissible uses of shared property include activities designed to enhance future investigations, such as payment of overtime, provision of police training, purchase of equipment, improvement of police facilities, upgrading of detention facilities, and conducting drug education awareness programs.”<sup>24</sup> Third, there is an express requirement that the funds are not to be used to supplant agency resources.

## **State Law**

State laws vary considerably in terms of how forfeited assets are to be disposed. At the risk of simplification, there are basically three distribution formulas. First, a number of states, such as Nevada, permit the return of all forfeiture proceeds to the initiating agency.<sup>25</sup> At the opposite extreme, a number of states do not permit the return of proceeds to law enforcement. Missouri, for example, requires that forfeiture proceeds be placed in an education fund.<sup>26</sup> All other states allocate forfeiture proceeds based on complicated formulas that involve multiple agencies, restrictions, and other limitations. Therefore, it is useful to think in terms of “generous” states, “restrictive” states, and states with “alternative arrangements” (see Appendix B for a list of disposition statutes by state).



## Generous States

Generous forfeiture states allow forfeiture proceeds to be retained for official use. Nevada, for example, requires that the governing body controlling a police agency that pursues forfeiture open a special account known as the “... Forfeiture Account” and requires, simply, that “The money in the account may be used for any lawful purpose deemed appropriate by the chief administrative officer of the law enforcement agency.”<sup>27</sup> To avoid having too much money accumulate in the fund, the law mandates that at the end of each fiscal year a percentage of the fund in excess of \$100,000 be distributed to local schools.

Several other generous forfeiture states (e.g., Montana, Oklahoma) permit local agencies to retain forfeited property for official use; however, if they sell such property, the law may require that the proceeds be deposited into some type of law enforcement fund. For example, South Dakota’s law requires that “All moneys seized or remaining proceeds from the sale of any forfeited property shall be paid into the drug control fund” or forwarded to the state’s Bureau of Narcotics and Dangerous Drugs.<sup>28</sup> Local agencies can then apply for and receive any or all of the funds they were required to deposit in the drug control fund.<sup>29</sup>

## Restrictive States

Restrictive forfeiture states either (1) have no laws governing the disposition of forfeited assets, or (2) place the funds in a law enforcement trust fund of sorts, or (3) require that funds be paid into other nonlaw enforcement funds. For example, Maryland and Vermont require forfeiture proceeds be paid into a state or county general fund,<sup>30</sup> whereas Minnesota requires the proceeds be paid into a *state* general fund.<sup>31</sup>

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Asset forfeiture critics have argued that officials in restrictive forfeiture states are most inclined to pursue adoptive forfeitures due to the prospect of receiving proceeds. A series of articles in *The Kansas City Star* detailed examples of law enforcement officials in Missouri, a state that allows no forfeiture proceeds to go to law enforcement,<sup>32</sup> bypassing state law in favor of adoptive forfeitures.<sup>33</sup> A recent study reached similar conclusions, namely that police agencies in restrictive states receive more equitable sharing payments than their counterparts in generous forfeiture states.<sup>34</sup>

### Alternative Arrangements

In states whose forfeiture disposition formulas permit less than 100 percent but more than none go to law enforcement agencies, the percentages range from 25 percent, as in Hawaii,<sup>35</sup> to 90 percent, as in West Virginia.<sup>36</sup> Some states also allow certain percentages to go to prosecutors. For example, Colorado permits 10 percent,<sup>37</sup> and California permits as much as 25 percent.<sup>38</sup> Still other states combine these percentages with distributions based on the level of involvement by each investigating agency,<sup>39</sup> the role each agency plays,<sup>40</sup> or local agreements. Texas is an example of the latter; distribution is based on agreements established by prosecutors.<sup>41</sup>







## Benefits of Forfeiture

Asset forfeiture is beneficial for at least three reasons. First, it is intended to reduce criminal activity by denying offenders the profits from their crimes. Second, a byproduct of asset forfeiture is more drug arrests. Third, yet perhaps most controversially, forfeiture helps cash-strapped law enforcement agencies augment their discretionary budgets to further target criminal activity.

### Crime Reduction

Much of the language surrounding forfeiture is couched in terms of removing the profit from criminal activity, but at its core, forfeiture's objective is crime deterrence. Because incarceration (or the threat of such) does not deter all offenders, forfeiture is intended to pick up where traditional punishments leave off. It has been said that “[t]he criminal views the prospect of a jail sentence as a calculated cost of generating revenue...” and that “[r]ecidivism is encouraged because the subject has learned that crime *does* pay.”<sup>42</sup>

Unfortunately, not a single published study has linked forfeiture activities to the prevalence of criminal activity. A team of economists recently offered up a theoretical argument concerning the possible deterrent effect of forfeiture, but they also argued that a *mix* of sanctions, not just forfeiture, would be most ideal: “by employing a mix of sanctions, with harm-based fines (or other punishment) plus confiscation of illegal gain [i.e., forfeiture], courts will be able to get closer to efficient deterrence than they can when constrained to use punishments in isolation.”<sup>43</sup>

Despite the lack of evidence that forfeiture can reduce a variety of crimes, there is some evidence that forfeiture can effectively address a number of specific problems. This guide considers several such problems in the “Problems for Which Forfeiture is a Remedy” starting on page 21.

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## More Drug Arrests

As is clear by now, there are financial incentives for police agencies to pursue asset forfeiture. This raises a proverbial “chicken or the egg” question: Do forfeiture laws increase enforcement activity, or does enforcement activity increase the prospects for asset forfeiture? One study found that state forfeiture laws are closely connected to drug arrests, and, secondarily, to forfeiture. In other words, states with the most generous forfeiture laws, those that return the greatest percentage of forfeiture proceeds to police, saw the greatest arrest activity: “police focus relatively more effort on drug control when they can enhance their budgets by retaining seized assets.”<sup>44</sup> Controversially, this takes the focus from finding solutions to specific crime problems to revenue generation. Yet it is difficult to fault police departments for seeking revenue to support continued crime fighting.

Whether more drug arrests are desirable depends, of course, on the particular drug-related problem. Careful analysis of a local drug problem should be conducted before making this judgment. If, for example, high-volume drug arrests overwhelm the courts and/or compromise public support for law enforcement efforts, then more drug arrests (and, by extension, forfeiture) may be undesirable.

## Budget Boost

The obvious advantage of asset forfeiture is its potential to boost an agency’s bottom line. Although forfeiture can yield a profit, it can be sufficient for forfeiture to simply yield enough proceeds to offset the costs of drug enforcement, such as the operation of a multijurisdictional drug task force. Researchers have found, indeed, that forfeiture can assist agencies by augmenting their discretionary budgets.

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## Possible Criticisms and Negative Consequences

Forfeiture also has been fairly heavily criticized. Critics point to the “drug war’s hidden economic agenda”<sup>46</sup> and refer to the means by which forfeiture compromises due process protections<sup>47</sup> and encourages law enforcement blunders.<sup>48</sup> Critics further claim that forfeiture circumvents proper appropriations channels, threatens due process protections, and guarantees a conflict of interest between effective crime control and creative financial management.

The Civil Asset Forfeiture Reform Act of 2000 (CAFRA)<sup>49</sup> made several changes to federal forfeiture law. Key provisions of the law include the creation of an innocent owner defense (for cases in which an innocent individual’s property is targeted for forfeiture) and a shift in the burden of proof from the property owner to the government. Concerning the latter, property owners were previously required to prove their property was not subject to forfeiture. Now the government must prove by a preponderance of the evidence that property is subject to forfeiture. Although CAFRA minimized much of the controversy associated with asset forfeiture, several criticisms of the practice still stand out.

### Profit Motive

In a rather creative study, Miller and Selva<sup>50</sup> used covert participant observation to document asset forfeiture activities. One of the authors acted as a confidential informant for a city’s undercover narcotics operation after he established a relationship with drug enforcement officials in the area. The results of the study were startling: agents were selective in their enforcement efforts, and the goal of seizing assets took precedence over the goal of taking narcotics out of circulation.<sup>§</sup>

§Referring to one case where a drug dealer received a large quantity of cocaine, Miller and Selva reported the following: “The researcher...was surprised when he was instructed to observe the suspect’s transactions to determine the rate at which the cocaine was being resold. Less drugs meant more cash, and the agent’s objective was to seize currency rather than cocaine. The case was successful as to proceeds, but perhaps not in view of the quantity of cocaine that officers knowingly permitted to reach consumers” (Miller and Selva, 1994, p. 328).



The Miller and Selva study was published in 1994, well before federal forfeiture reforms were put in place. Even so, some more recent studies have raised similar concerns. For example, the author of one study surveyed 1,400 law enforcement administrators from around the nation and found that more than 60 percent of them either agreed or strongly agreed with the statement that “forfeiture is a necessary budgetary supplement for my agency.”<sup>51</sup> The authors of another study found that law enforcement agencies in restrictive forfeiture states receive considerably more equitable sharing payments than their counterparts in generous forfeiture states.<sup>52</sup> The logic is that the agencies in restrictive forfeiture states teamed up with federal officials to participate in adoptive forfeitures, in an effort to enhance the prospects of receiving forfeiture proceeds.

In fairness, at least one published study showed that forfeiture activities have no apparent connection with state legal arrangements.<sup>53</sup> In particular, “asset forfeiture does not have a substantial impact on the policing priorities of local agencies.”<sup>54</sup> The study, which was limited to jurisdictions in Ohio, also found that agencies pursued criminal forfeiture more often than civil forfeiture. The reason for this is that Ohio civil forfeiture laws require that a criminal prosecution accompany a civil forfeiture action.<sup>55</sup>

### **Budget Consequences**

One of the advantages of forfeiture identified earlier is its ability to augment discretionary budgets. This can be a disadvantage, too, particularly if budget-setting authorities catch wind of an agency’s successes with forfeiture. Some jurisdictions have reportedly supplanted (or shorted) regular police operating budgets on the assumption that police could make up the shortfall with asset forfeiture.<sup>56</sup> As the authors of one study observed:

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Local governments capture a significant fraction of the seizures that police make by reducing their other allocations to policing, partially undermining the statutory incentive created by seizure laws... Police, in turn, respond to the real net incentives for seizures once local offsets are taken into account, not simply the incentives set out in statute. When police are really allowed to keep the assets they seize, they increase antidrug policing.<sup>57</sup>

### **Neglect of Other Crimes**

Forfeiture laws tend mostly to target “consensual” crimes and those with the greatest potential for profit. To the extent law enforcement agencies are drawn to forfeiture due to the potential to receive proceeds, this could discourage them from channeling resources into areas where the potential to receive forfeiture proceeds is nil. At the least, generous forfeiture laws appear to increase agencies’ enforcement activities in areas where the chances of receiving proceeds are greatest. As one study concluded, since the Comprehensive Crime Control Act of 1984, “[t]he relative allocation of state and local law enforcement resources has shifted dramatically towards drug enforcement, the major source of asset confiscations.”<sup>58</sup> In fairness, though, it can be argued that much of the nation was focused on waging a war on drugs during that time, irrespective of forfeiture laws.

### **Appearance of Impropriety**

Forfeiture windfalls can also reek of impropriety. For example, some small town agencies have received an excess of forfeiture proceeds and used the money to purchase items that some considered unnecessary.<sup>59</sup> Some jurisdictions have also received negative publicity for controversial plea agreements with known drug offenders. In one case, a dealer

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faced 15 years in prison under one state's tough antidrug laws. The dealer surrendered his interest in \$31,300 in cash seized from his apartment and received only a 5-year prison term. Plea agreements such as these raise several questions, and, to some, seem like a version of sanctioned extortion. Researchers have uncovered many other examples of questionable forfeiture-related plea agreements that look at least somewhat questionable.<sup>60</sup>

### Threats to Due Process

Asset forfeiture has been extensively criticized on constitutional grounds.<sup>61</sup> Critics allege that forfeiture violates, among other constitutional provisions, (1) the Fifth Amendment's double jeopardy clause; (2) the due process clauses of the Fifth and Fourteenth Amendments; and (3) the Eighth Amendment's excessive fines and punishment clauses.

Concerning the first challenge, the U.S. Supreme Court held that civil asset forfeiture does not violate the Fifth Amendment's double jeopardy clause.<sup>62</sup> In other words, asset forfeiture does not constitute "punishment" in the traditional sense. In contrast, the Supreme Court held that forfeiture *can* violate due process.<sup>63</sup> At one point, there was no federal requirement that interested owners be notified before their property was forfeited. The Court held:

the seizure of real property...is not one of those extraordinary instances that justify the postponement of notice and hearing. Unless exigent circumstances are present, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture (p. 62).



In another important case,<sup>64</sup> the Supreme Court addressed a challenge to a civil forfeiture action on the grounds that it violated the excessive fines clause of the Eighth Amendment. It held that “forfeiture generally and statutory *in rem* forfeiture in particular, historically have been understood, at least in part, as punishment” and that “[w]e therefore conclude that forfeiture under these provisions constitutes ‘payment to a sovereign as punishment for some offense,’ and, as such, is subject to the limitations of the Eighth Amendment’s Excessive Fines Clause.”<sup>65</sup>







## Problems for Which Forfeiture Is a Remedy

Asset forfeiture is not limited to drug enforcement. It can be used to target a wide range of crime-related phenomena.<sup>66</sup> This section briefly reviews asset forfeiture laws that target illegal drug markets and those that target profits from other types of criminal activity. These are some of the most promising areas in which law enforcement officials can pursue asset forfeiture.

§See Problem-Specific Guide No. 4, *Drug Dealing in Privately Owned Apartment Complexes*.

§§See Problem-Specific Guide No. 16, *Clandestine Methamphetamine Labs, 2nd Edition*.

### Illegal Drug Markets

The 1970 Comprehensive Drug Abuse Prevention and Control Act provided for the forfeiture of property used in connection with controlled substances. Since then various federal statutes have been enacted and extended the reach of asset forfeiture.<sup>67</sup> This legislative progression has made forfeiture a viable enforcement option for a wide variety of drug-related offenses.

In terms of specific drug-related problems, forfeiture has been used in response to everything from drug dealing at apartment complexes<sup>§</sup> to the operation of clandestine methamphetamine laboratories.<sup>§§</sup> Officials must take care, however, to ensure that the property targeted for forfeiture is sufficiently valuable in relation to the time and effort required to execute a well-planned bust.

### Nuisance Properties

Fulton County (Atlanta), Georgia's Neighborhood Fresh Start is an example of law enforcement officials' use of state forfeiture laws to target nuisance properties.<sup>68</sup> Prosecutors target houses plagued with drug activity for at least 2 years. Ideally, the house has had at least five arrests for drug-related activity or two previous search warrant incidents in which



§See Problem-Specific Guide No. 30,  
*Disorder at Budget Motels.*

drugs were found. They weigh the value of the house against the amount of drugs and contraband seized—mainly due to Eighth Amendment concerns. The chief of police then sends the owner a cease-and-desist letter. The letter is followed by additional surveillance, undercover drug buys, and enforcement. If the activity continues, forfeiture is pursued. In a successful forfeiture, ownership of the house is transferred to the state and the district attorney, and the county moves a police officer into the home. The officer pays a nominal amount of rent and serves as a community resource officer, working only the beat in which the house is located. After the officer lives in the house for a year, the county works with the United Way and other charitable organizations to move a low-income family into the home.

Another class of nuisance properties includes so-called “budget motels.”<sup>§</sup> In some communities, these properties are responsible for a disproportionate number of calls for service. Because these motels offer cheap accommodations, usually accept cash, do not take many steps to limit certain types of clientele who frequent the premises, and tend to be located in already crime-prone areas, it is no surprise that problems occur. Prostitution, drug dealing, loud parties, and other activities seem to happen frequently. The usual strategies of patrolling the properties and arresting offenders may not be as effective as targeting the assets of owners who turn the proverbial “blind eye” to problems at their motels. Several jurisdictions have used state nuisance laws to forfeit such properties. In many cases, however, the mere threat of forfeiture encourages property owners to take steps toward cleaning up and otherwise improving their properties.



## Street Racing§

In response to a surge in illegal street racing fatalities on city streets, San Diego enacted the nation's first anti-street racing forfeiture ordinance.§§ In general, the law provides for forfeiture of vehicles used in illegal speed contests. Before forfeiture is pursued, however, law enforcement must confirm that the person whose vehicle is targeted has a previous Vehicle Code conviction. Despite this additional restriction, research suggests the ordinance has reduced the street racing problem in San Diego. In particular, an evaluation of the program revealed that the ordinance did more to reduce the street racing problems than other law enforcement activities (such as increased arrests and prosecutions for Vehicle Code violations), negative press coverage of street racing, and sanctioned races at a local stadium on weekends.<sup>69</sup>

§See Problem-Specific Guide No. 28, *Street Racing*.

§§“...a motor vehicle shall be declared a nuisance and forfeited subject to this division if...[i]t is used in violation of California Vehicle Code §§ 23109(a) or (c); and...it is being driven by the registered owner of the vehicle, the registered owner is a passenger, the registered owner's immediate family members is driving or riding in the car, or the driver or passenger lives at the same address as the registered owner” (San Diego Municipal Code, Chapter 5, Article 2, Division 52.5301).

§§§See Problem-Specific Guide No. 36, *Drunk Driving*.

## Drunk Driving§§§

The federal Transportation Equity Act for the 21st Century, enacted in 1998,<sup>70</sup> requires that state laws contain provisions for seizure and/or forfeiture of the vehicles used by repeat drunk driving offenders. States that fail to do so risk losing federal funding. Although most of the laws provide for temporary impoundment, such as in an impound lot, some provide for permanent forfeiture of the vehicles. No matter the means of depriving repeat drunk drivers of their vehicles, researchers have found that such statutes result in considerable deterrent effects. For example, an Ohio study found that the reduction in DWI offenses for first-time offenders was 80 percent during the impound period, followed by 56 percent after.<sup>71</sup> Similar results were reported in California<sup>72</sup> and Portland, Oregon, evaluations.<sup>73</sup>

§§§See Problem-Specific Guide No. 36, *Drunk Driving*.



New York City's Vehicle Forfeiture Initiative<sup>74</sup> is perhaps the most punitive in the United States. It provides for forfeiture for first-time offenders. Since 1999, the ordinance has been used to forfeit more than 6,500 vehicles, leading some to conclude that it "has saved many lives by encouraging people to refrain from drinking and driving."<sup>75</sup> Critics, though, feel the prospect of forfeiture following a first-time offense is excessive: "The policy is an obvious attempt to punish, and it operates by subjecting the automobiles of DWI offenders to forfeiture regardless of their value or the harm that the offender caused."<sup>76</sup>

### **Drivers with Revoked Licenses**

Forfeiture laws have been expanded to cover vehicles driven by those with revoked licenses. For example, California's Vehicle Code<sup>77</sup> provides that "a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle and has a previous misdemeanor conviction..." under one of several other related Vehicle Code provisions.

Researchers have been hesitant to claim that forfeiture laws such as those in California are effective.<sup>78</sup> Why? The explanation one team of researchers offered is that officials in California readily use the state's temporary impoundment provision (for first-time offenders) much more often than they use the forfeiture provision. The researchers found two reasons for this: there is little support of forfeiture from district attorneys and the costs of moving forward with forfeiture actions often exceeded the value of the vehicles targeted.<sup>79</sup>

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## Prostitution

Prostitution is a significant problem for many jurisdictions. A wide range of enforcement options are available: intensive enforcement, banning prostitutes from certain areas, imposing curfews, manipulating the physical environment, offering services to prostitutes, and, of course, targeting the “johns” and their property.<sup>§</sup> Portland, Oregon, is credited with being among the more aggressive jurisdictions when it comes to targeting the property—particularly the vehicles—of prostitution clients. The vehicles are often seized up front, but many are returned to prostitution clients who submit to deferred prosecution arrangements. The prospect of losing one’s mode of transportation has apparently resulted in low recidivism rates.<sup>80</sup>

§See Problem-Specific Guide No. 2, *Street Prostitution, 2nd Edition*.





## Implementing a Forfeiture Program

Three steps should be followed in setting up an asset forfeiture program.<sup>81</sup>§ First, police administrators should formulate a mission statement conveying the purpose of the forfeiture program. Second, with the help of appropriate legal counsel, adopt appropriate policies and procedures to ensure the forfeiture program operates within legal boundaries. As this response guide has made clear, forfeiture's legal requirements vary considerably from one jurisdiction to the next and can be rather complicated. Third, consider the resources necessary to start and sustain a forfeiture program. The department needs to be committed to launching the program because, at least in the beginning, the costs associated with personnel training, administration, and investigation will surely exceed any financial benefits from forfeiture actions.

Once a mission statement and appropriate policies are adopted, investigators can pursue forfeiture actions in consultation with the attorney (e.g., prosecutor) who will represent the government if the case goes to trial. This individual should be updated throughout the investigation, as he or she will be helpful in determining whether to pursue civil or criminal forfeiture. It is also worthwhile for agencies to consider collaborating with other agencies that have successfully forfeited assets in the past. Once a program is launched and assets are successfully seized, it is critical for the department to safeguard the property in question until all legal disputes are resolved. This can include everything from appraising automobiles and storing jewelry to depositing cash into a bank account and maintaining real property.<sup>82</sup>

§For more details on the mechanics of setting up a forfeiture program and engaging in investigations, see Goldsmith (1988), Booth (1988), Gallagher (1988), Stolker (1989), Bryant (1989), Morley (1989), Murphy (1989), Ferris (1989), Holmes (1989), and Stolker et al. (1989).



## Ethical Considerations

In response to negative publicity and criticism of forfeiture (especially civil forfeiture), the U.S. Department of the Treasury’s Executive Office for Asset Forfeiture drafted a National Code of Professional Conduct for Asset Forfeiture (see Appendix C). It consists of “ten commandments” to federal agencies on the proper use of asset forfeiture. Not long after the National Code of Professional Conduct was drafted, the National District Attorneys Association (NDAA) assembled a task force that developed its Guidelines for Civil Asset Forfeiture (see Appendix D). The NDAA guidelines have been adopted in several states.<sup>83</sup> In general, these documents emphasize that the core purpose of forfeiture is enforcement, not revenue generation. They also place great emphasis on avoiding corruption, ensuring procedural fairness, and maintaining accountability.

## Avoiding the Negative

The “Possible Criticisms and Negative Consequences” section above may give the impression that forfeiture’s negatives outweigh its positives. Nothing could be further from the truth. First, it is important to be at least *aware* of forfeiture’s possible downsides. Second, many of the criticisms were offered up well before major forfeiture reform (i.e., CAFRA) was enacted. Such reforms have made significant strides in terms of protecting property owners’ due process rights and ensuring that forfeiture practices remain ethical and effective. Third, any effective crime-control strategy needs to be balanced against the possible argument that it threatens people’s rights. Whether the specific strategy is intensive street-level enforcement, aggressive use of investigative detentions, putting more police officers on the streets, or carrying out sting operations, it is almost always likely that there will be critics who oppose the practice. Forfeiture is

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no different. It is controversial because it has such potentially powerful economic consequences. Finally, no matter the pros or cons associated with forfeiture, it is difficult to fault financially strapped law enforcement agencies for seeking resources to continue their crime-fighting efforts.

### **Bringing the Community on Board**

One possible strategy to minimize any potential fallout associated with forfeiture is to bring the community on board from the outset. This occurred in the early days of Atlanta's Neighborhood Fresh Start initiative (see above). There, from the start, prosecutors met with and engaged residents to identify problems. Rather than take a top-down approach of defining what problems should be targeted, prosecutors went to community meetings and gatherings to learn residents' problems and concerns. The program's success may also be attributed to the fact that prosecutors went into the community first, and the police department had little to no involvement at the beginning. Relationships between the police and residents of the Fresh Start neighborhood were strained, but prosecutors were unfamiliar faces in the community. Their appearance on the scene afforded an opportunity to build trust and communication right from the start without having to deal with any strained relationships that could have interfered with progress.

### **The "Planning Unit"**

Before enacting a forfeiture program, consider forming a planning unit that consists of representatives from various government agencies, including the police department, the code enforcement agency, the city council, the mayor's office, the city attorney's office, or any combination of these and other local agencies. Such a unit, however composed, should then hold scheduled meetings with community members to

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identify problems and formulate appropriate solutions. Then the planning unit representatives can pool their resources and determine (especially with consultation from the city attorney or the prosecutor’s office) whether forfeiture is a viable option for the problem in question. This grassroots, ground-up approach could pay huge dividends in terms of getting the word out that forfeiture is an option and securing community support for its use—in the beginning.

### **Evaluating Success**

There is no “one best way” to evaluate asset forfeiture success, but at least four important issues should be considered. First, because forfeiture *can* offset the costs associated with targeting certain crime problems, agencies should weigh assets forfeited against the actual costs of enforcement. When forfeiture proceeds outweigh enforcement costs, forfeiture can be declared a success—at least from a budgetary standpoint.

Second, community feedback should be secured along the way, particularly when assets such as real property and other valuables are subject to forfeiture. This may not be of particular concern to some agencies, but community members may get upset if it appears the government is taking people’s property unfairly. This happened in the early days of Fulton County’s Neighborhood Fresh Start (again, see above).

Third, agencies should weigh seizures against forfeitures. Because most forfeitures are finalized following a court proceeding, it is worth knowing how many items targeted for forfeiture through seizure actually end up forfeited. This is akin to the relationship between arrests and convictions. A significant drop-off in forfeitures relative to seizures would be not unlike a significant drop-off between arrests and convictions.

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Finally, one of the goals of forfeiture should be to promote fairness. This raises the question of whether case dispositions are appropriate for the offense in question. Reasonable care can help agencies overcome the problem of forfeited property values, significantly outweighing the seriousness of the underlying offense. As mentioned earlier in this guide, excessive forfeiture can constitute an Eighth Amendment violation.





## Conclusion

Asset forfeiture provides a valuable tool for law enforcement officials, as it helps strike at the economic foundations of criminal activity. It has been used successfully to target a variety of crime problems, ranging from illegal drug sales and street racing to nuisance properties and drunk driving. Forfeiture can also help agencies offset the costs of reducing crime through laws that permit them to receive forfeiture proceeds and equitable sharing arrangements. Yet forfeiture is a controversial practice. Critics cite excessive use of civil, in lieu of criminal, forfeiture due to the former's lower standard of proof, though some studies revealed that this does not occur. Critics also oppose the practice of distributing asset forfeiture proceeds among law enforcement agencies. Indeed, researchers and reporters have uncovered some examples of dependence on forfeiture in law enforcement circles and possible distortion of goals in the ongoing war against crime. With due diligence and attention to appropriate codes of professional conduct, law enforcement officials can implement asset forfeiture programs that meet all legal requirements, protect property owners' rights, and effectively target criminal activity.





## **Appendix A: Select Federal Forfeiture Laws**

18 USC § 492: Forfeiture of counterfeit paraphernalia.

18 USC § 844: Forfeitures relating to explosive law violations.

18 USC § 924: Forfeitures relating to firearms violations.

18 USC § 1955: Forfeitures related to illegal gambling businesses.

18 USC Chapter 96: Racketeer Influenced and Corrupt Organizations (RICO).

18 USC § 1963: Criminal forfeitures under RICO.

18 USC § 2253: Criminal forfeiture provisions related to sexual exploitation and other abuse of children.

18 USC § 2254: Civil forfeiture provisions related to sexual exploitation and other abuse of children.

18 USC § 981: Civil forfeiture.

18 USC § 982: Criminal forfeiture.

19 USC § 1607: Forfeiture provisions for seizures valued \$500,000 or less.

21 USC Chapter 13: Controlled Substances Act (CSA).

21 USC § 853: Criminal forfeiture under the CSA.

21 USC § 881: Forfeiture provisions under the CSA.

28 USC § 2461: Criminal forfeiture authority.

49 USC § 80303: Forfeitures of conveyances carrying contraband.

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## Appendix B: Disposition Statutes by State

Alabama	Ala. Code § 20-2-93 (e)
Alaska	Ak. Stat. §§ 17.30.112 & 17.30.122
Arizona	Ariz. Rev. Stat. Ann. § 13-4315
Arkansas	Ark. Code Ann. §§ 5-64-505 (h) & (i)
California	Cal. Health & Safety Code § 11489
Colorado	Colo. Rev. Stat. §16-13-311
Connecticut	Conn. Gen. Stat. § 54-36i
Delaware	Del. Code Ann. Title 16 §4784(f)
District of Columbia	D.C. Code Ann. § 48-905.02 (d)(4)
Florida	Fla. Stat. Ann. § 932-7055 (4)
Georgia	Ga. Code Ann. § 16-13-49 (u)(4)
Hawaii	Haw. Rev. Stat. § 712A-16 (2)
Idaho	Idaho Code §37-2744 (e)
Illinois	720 Ill. Comp. Stat. 550/12 (g)
Indiana	Ind. Code Ann. § 34-24-1-6
Iowa	Iowa Code Ann. § 809A.17
Kansas	Kan. Stat. Ann. § 60-4117
Kentucky	Ky. Rev. Stat. Ann § 218A.435
Louisiana	La. Rev. Stat. Ann. § 40:2616
Maine	Me. Rev. Stat. Ann Title 15 ch. 517, § 5822
Maryland	Md. Ann. Code Art. § 12-403
Massachusetts	Mass. Ann. Laws ch. 94C, § 47 (d)
Michigan	Mich. Comp. Laws § 333.7524
Minnesota	Minn. Stat. Ann. § 609.5315
Mississippi	Miss. Code Ann. § 41-29-181
Missouri	Mo. Ann. Stat. § 513.623



Montana	Mont. Code Ann. § 44-12-206
Nebraska	Neb. Rev. Stat § 28-1439.02
Nevada	Nev. Rev. Stat. §§ 179.118 & 179.1187
New Hampshire	N.H. Rev. Stat. Ann. § 318-B:17-b (V)(a)
New Jersey	N.J. Stat. Ann § 2C:64-6
New Mexico	N.M. Code Ann. § 31-27-7A
New York	N.Y.C.P.L.R. § 1349 (2)(e-h)
North Carolina	N.C. Gen. Stat § 90-112 (d)
North Dakota	N.D. Cent. Code Ann. § 19-03.1-36.5
Ohio	Ohio Rev. Code Ann. §§2925.44 & 2933.43(D)
Oklahoma	Okla. Stat. Ann. §§63-2-503E & 63-2-5061
Oregon	Oregon Const. Art. XV, § 10(7)
Pennsylvania	Pa. Consol. Stat. Ann. Title 35 §§6801 (e)-(f)
Rhode Island	R.I. Gen Laws § 21-28-5.04 (b)(3)(A)
South Carolina	S.C. Code Ann. § 44-53-530 (e)
South Dakota	S.D. Codified Laws Ann. § 34-20B-89
Tennessee	Tenn. Code Ann. § 39-17-420
Texas	Tex. Code Crim. Proc. § 59.06
Utah	Utah Code Ann. § 24-1-15
Vermont	Vt. Stat. Ann. Title 18, § 4247
Virginia	Va. Code Ann. § 19.2-386.14
Washington	Wash. Rev. Code Ann. § 69-50-505 (j)
West Virginia	W. Va. Code § 60A-7-706
Wisconsin	Wis. Stat. Ann. § 961.55 (5)
Wyoming	Wyo. Stat. § 35-7-1049 (e)



## **Appendix C: National Code of Professional Conduct for Asset Forfeiture**

1. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.
  2. No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.
  3. Whenever practicable (excluding border searches, exigent circumstances, etc.) and in all cases involving real property, a judicial finding of probable cause shall be secured when property is seized for forfeiture. Seizing agencies shall strictly comply with all applicable legal requirements governing seizure practice and procedure.
  4. If no judicial finding of probable cause is secured, the seizure shall be approved in writing by a prosecuting or agency attorney or by a supervisory-level official.
  5. Seizing entities shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures.
  6. The manual shall include procedures for prompt notice to interest holders, the expeditious release of seized property where appropriate, and the prompt resolution of claims of innocent ownership.
  7. Seizing entities retaining forfeited property for official law enforcement use shall ensure that the property is subject to internal controls consistent with those applicable to property acquired through the normal appropriations process of that entity.
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8. Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.
9. Seizing agencies shall strive to ensure that seized property is protected and its value preserved.
10. Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.



## **Appendix D: National District Attorneys Association Guidelines for Civil Asset Forfeiture<sup>84</sup>**

1. The removal of unlawfully obtained proceeds of criminal activity and the elimination of the instrumentalities used to commit crimes are the principal goals of asset forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation or prosecution of criminal offenses.
  2. Where multiple agencies in a geographic region have jurisdiction to pursue asset forfeiture, every effort should be made to cooperate to advance the public interest.
  3. Every government entity with the authority to seize property should ensure that its asset forfeiture program provides for: (a) Prompt prosecutorial review of the circumstances, and propriety of the seizure; (b) Timely notice of seizure to interest holders of seized property; and (c) Expeditious resolution of ownership claims and a rapid release of property to those entitled to the return of the property.
  4. Absent exigent circumstances, a judicial order is advisable for all seizures of real property. When real property in residential use is sought to be forfeited, the least intrusive means that will preserve the property for forfeiture and protect the public should be employed. A notice of *lis pendens* or an order restraining alienation should suffice to preserve the government's interest in forfeiture pending final judicial determination of the forfeiture action.
  5. Every entity retaining forfeited property for official law enforcement use should ensure that the property is subject to controls consistent with those applicable to property acquired through the normal appropriations process.
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6. No seized property should be used without judicial authorization and/or supervision. A use order may be obtained from the court in appropriate circumstances. Otherwise the property should not be used unless the forfeiture action has been completed and title to the property has vested in the receiving agency. Forfeited property not used in an undercover capacity should be sold or added to the regular inventory of the agency. All property should be used and disposed of in a manner consistent with the use and disposition of similar property by that agency.
  7. The disposition of forfeited property retained by the law enforcement agency should not be determined by any person who directly supervised or exercised discretion in its forfeiture.
  8. Forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.
  9. Every seizing agency should maintain seized property to preserve value for successful claimants as well as the taxpayers.
  10. To the extent possible, civil forfeiture actions should be initiated as independent cases which are not controlled or influenced by the criminal prosecution. Prosecutors should avoid plea agreements in a criminal case which involve agreements to dismiss forfeiture proceedings. The converse is also true. Prosecutors should avoid settlements in a forfeiture case which involve concessions in a criminal proceeding.
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11. Every prosecutor should establish procedures to ensure expeditious resolution of ownership claims if challenges to the asset forfeiture proceeding are made and timely return of the property to the known owner or interest holders if the forfeiture action is dismissed or is unsuccessful.
  12. Salaries and personal benefits of any person influencing or controlling the selection, investigation, or prosecution of forfeiture cases must be managed in such a way that employment or salary does not depend upon the level of seizures or forfeitures in which they participate.
  13. Agency employees and their families should be prohibited from purchasing forfeited property directly or indirectly from the agency, or any property forfeited by any other agency, if the employee participated in any aspect of the investigation or litigation involving that property.
  14. Agencies receiving forfeiture funds should make annual budget requests based on agency funding needs without regard for anticipated or projected asset forfeiture revenues.
  15. Prosecutors should pursue forfeiture actions to further the remedial goals set forth above. A prosecutor should not consider any personal or political advantages or disadvantages or gains or losses that the initiation of a forfeiture action may bring to the prosecutor's office in deciding whether to initiate or dismiss a forfeiture proceeding. Nor should a prosecutor improperly consider the race, gender, social, or economic status of any person in deciding whether to initiate or dismiss a forfeiture proceeding. This guideline should not be read to preclude the initiation of forfeiture proceedings, which contribute to the fulfillment of the official mission of the prosecutor's office.
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## Endnotes

1. United States Department of Justice (1994).
  2. Myers and Brzostowski (1982).
  3. President's Commission on Model State Drug Laws (1993).
  4. Grosskopf, Hayes, and Hirschberg (1995).
  5. Coe and Wiesel (2001).
  6. *United States v. United States Coin and Currency*, 401 U.S. 715 (1971), p. 720.
  7. Hyde (1995); but see Clingermayer, Hecker, and Madsen (2005) who found that in Ohio criminal forfeiture is more common than civil forfeiture.
  8. Hyde (1995); Warchol, Payne, and Johnson (1996), pp. 53-4.
  9. *United States v. One Mercedes 560 SEL* (1990); *United States v. One Parcel of Land at 508 Depot Street* (1992).
  10. Hyde (1995).
  11. Warchol and Johnson (1996).
  12. *Cooper v. Greenwood*, 904 F.2d 302, 304-5 (5th Cir. 1990).
  13. Edgeworth (2004), p. 10.
  14. Edgeworth (2004), p. 11.
  15. *United States v. Banco Cafetero Panama*, 797 F.2d 1154, p. 1158 (2nd Cir. 1986).
  16. 21 U.S.C. § 881(a)(7).
  17. 21 U.S.C. § 853(a)(3).
  18. *United States v. Canble*, 706 F.2d 1322 (5th Cir. 1983).
  19. 18 U.S.C. § 1963(a)(2).
  20. [www.usdoj.gov/jmd/afp/02fundreport/2007affr/report1.htm](http://www.usdoj.gov/jmd/afp/02fundreport/2007affr/report1.htm)
  21. [www.usdoj.gov/jmd/afp/02fundreport/2007affr/report3.htm](http://www.usdoj.gov/jmd/afp/02fundreport/2007affr/report3.htm)
  22. See, e.g., 21 U.S.C. §§ 881(e)(1)(A) and (e)(3); 18 U.S.C. § 981(e)(2); 18 U.S.C. § 1963(g); and 19 U.S.C. § 1616a.
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23. Worrall and Kovandzic (2008); for more details on the process see: [www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usam/title9/116mcrm.htm](http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/116mcrm.htm)
  24. Edgeworth (2004), p. 173.
  25. Nev. Rev. Stat. §§ 179.118 and 179.1187.
  26. Mo. Ann. Stat. § 513.623.
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## About the Author

John L. Worrall

John L. Worrall is an Associate Professor of Criminology at the University of Texas at Dallas. He received his Ph.D. in political science from Washington State University in 1999. He has written a number of studies on policing, courts, and legal issues, including asset forfeiture. Dr. Worrall currently serves as Editor of *Police Quarterly* and as the Associate Director of the W.W. Caruth Dallas Police Institute, a collaborative research and training program involving the Dallas Police Department, the University of North Texas, and the University of Texas at Dallas.

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e110810177

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