

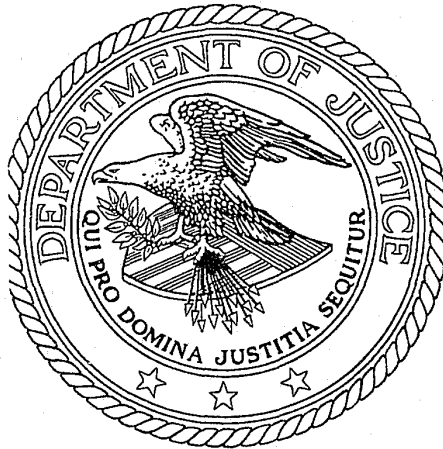
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Federal Forfeiture of the Instruments and Proceeds of Crime: The Program in a Nutshell

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Prepared by the
Executive Office for Asset Forfeiture
Office of the Deputy Attorney General



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Executive Office for Asset Forfeiture

Washington, D.C. 20530

**FEDERAL FORFEITURE OF THE INSTRUMENTS AND
PROCEEDS OF CRIME:**

THE PROGRAM IN A NUTSHELL

OVERVIEW

Attorney General Dick Thornburgh believes that forfeiture is one of the most promising and powerful weapons in the nation's anti-crime arsenal. He has noted that "It is indeed poetic justice when money seized from illegal drug dealing can be used to arrest, convict and jail other drug dealers." The Attorney General has made forfeiture a top priority and moved to increase the forfeiture effectiveness of all Department of Justice agencies. To oversee the program and the implementation of needed improvements, Attorney General Thornburgh has established a high-level Executive Office for Asset Forfeiture to oversee all aspects of the Department's forfeiture program.

As recently as FY 1985, total Department forfeitures were \$27.2 million. Four years later, FY 1989, forfeitures had grown more than twenty-fold. Last year, the Department of Justice forfeited over \$600 million in

property used in or derived from the proceeds of criminal activity, primarily drug trafficking. About \$575 million of this total was deposited in the Assets Forfeiture Fund; about \$30 million in forfeited tangible property (primarily cars, boats, and airplanes) were retained for official use by Federal, State and local law enforcement agencies.

USE OF FORFEITURE PROCEEDS

Federal law governs the use of forfeited property. Of the over \$600 million forfeited in FY 1989, the distribution was approximately as follows:

- \$281 million for Federal prison construction;
- \$174 million to State and local law enforcement agencies to enhance their law enforcement efforts;
- \$85 million to Federal law enforcement agencies to enhance Federal law enforcement efforts; and
- \$30 million to hire additional Federal drug prosecutors.

In sum, ABOUT \$570 MILLION DOLLARS IN PROPERTY TAKEN FROM CRIMINALS WAS PUMPED BACK INTO LAW ENFORCEMENT IN FY 1989 ALONE -- AT NO COST TO THE TAXPAYER. The remaining funds were used for case

expenses such as paying off innocent lienholders, payments to private warehousemen and auctioneers, and other costs related to property management and disposal.

SOURCES OF THESE PROPERTIES

Numerous Federal laws authorize seizure and forfeiture of property used in or derived from criminal activities. The laws most frequently used by the Department of Justice are the drug laws, money laundering laws, and racketeering laws.

Of the over \$600 million forfeited in FY 1989, about \$520 million was from seizures of cash, bank accounts, and other financial instruments. The rest was from seizures of other property. Because any property purchased with certain criminal proceeds can be forfeited, the variety of forfeited items is enormous and includes jewelry, art objects, and even some livestock.

METHODS OF FORFEITURE

Federal investigative agencies, often with the assistance of State and local law enforcement agencies, are responsible for identifying forfeitable property during the course of their criminal investigations. The three Department of Justice investigative agencies which seize forfeitable property are the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the Immigration

and Naturalization Service (INS). In addition, the Internal Revenue Service and the Bureau of Alcohol, Tobacco and Firearms, agencies of the Treasury Department, bring their seizures to the Department of Justice. The same is true of the Postal Inspection Service which is part of the United States Postal Service. Judicial forfeitures are handled by the 94 United States Attorneys' Offices with support from the Department's Criminal Division.

There are three basic methods by which properties are forfeited. Many properties are administratively forfeited by the Federal seizing agency. In an administrative forfeiture, notices are mailed to all persons known to have any ownership interest in the property and a notice of intent to forfeit is published in newspapers. If no one comes forward to claim the property within 20 days, it is forfeited without court action.

If a claimant files a claim and cost bond during an administrative forfeiture, or if the property is valued in excess of \$100,000, then the property must generally be forfeited through a civil court proceeding. Civil judicial forfeiture is like other civil lawsuits; the Government has the burden of persuading a U.S. District Court that the property is forfeitable and the claimant has an opportunity to assert defenses to forfeiture. The final decision is made by a U.S. District Court.

The third method of forfeiting property is the criminal judicial forfeiture. This is done in conjunction with the criminal prosecution of the defendant. If the court finds the defendant guilty of the crime charged, then the defendant's property used in or derived from the crime can be forfeited as part of the final judgment in the criminal case.

MANAGEMENT OF SEIZED PROPERTY

Because property can only be forfeited through one of the legal procedures described above, several months usually elapse between the time the property is seized for forfeiture and the time it is actually declared forfeited. Moreover, once real or personal property is forfeited, it takes some time to sell it. Within the Department of Justice, it is the U.S. Marshals Service which has the primary responsibility for maintaining and protecting seized property. Moreover, the Marshals Service is also responsible for selling property once it has been forfeited.

As this is written, the Marshals Service has custody of over \$1 billion in seized property being held pending forfeiture. Of this total, over \$300 million is in the form of cash deposited in a special holding account in the U.S. Treasury, over \$400 million is in the form of real estate, and the remainder is made up of different forms of personal property including aircraft, vessels,

motor vehicles, and jewelry. The job of the Marshals is a difficult one -- to keep this property safe and in good condition until it can be forfeited and sold.

SALE OF FORFEITED PROPERTY

Once property is forfeited, it is disposed of in different ways. In FY 1989 about \$30 million worth of forfeited property (primarily motor vehicles, aircraft, vessels, and radios) were transferred to Federal, State and local law enforcement agencies for official law enforcement use. Sales of property by the Marshals produced about \$60 million in FY 1989.

Forfeited real estate is usually listed with a private real estate brokerage firm in the area where it is located. Forfeited aircraft are sold through one of two private aircraft sales firms which operate on contract to the Marshals Service. Motor vehicles are usually sold at auction, often along with surplus Government vehicles being disposed of by the General Services Administration. Most such auctions are held in the areas of the nation where seizures most frequently occur: along the Southwest Border and in large metropolitan areas. The Marshals Service is negotiating a contract with a jewelry sales firm to sell all forfeited jewelry.

Citizens can learn of significant sales of forfeited property by obtaining a copy of USA TODAY, a newspaper which is

distributed nationally. Notices of sale are placed in the classified section of that newspaper on the third Wednesday of each month. Despite public perceptions to the contrary, forfeited properties usually sell for prices at or near their fair market value. Stories of incredible bargains are usually just that -- incredible. Prices paid for forfeited property at Marshals auctions are comparable to those paid in similar settings such as estate sales and bank auctions of repossessed property.

EQUITABLE SHARING OF FORFEITED PROPERTY

In 1984, Congress approved legislation proposed by the Department of Justice authorizing Federal agencies to share forfeited property with State and local law enforcement agencies which participated in the investigation resulting in the forfeiture. Through August of 1990, the Department of Justice has shared over \$450 million in cash and \$64 million in tangible property with participating State and local law enforcement agencies. In sum, over a half-billion dollars in forfeited cash and property has been shared with State and local agencies since the equitable sharing program began five years ago. The amount shared has increased each year; about half of the total shared with State and local agencies since FY 1986 was shared in FY 1989 alone!

The purpose of equitable sharing is to foster improved cooperation among Federal, State, and local law enforcement

agencies -- and the sharing program has been an incredible success! Increased State and local law enforcement assistance is a major factor in the dramatic increase in federal forfeitures.

EQUITABLE SHARING PROCEDURES

There are two ways that State and local law enforcement agencies can qualify for federal sharing of forfeited property. First, the agencies can work with Federal agencies in a joint investigation. If the investigation leads to the seizure and forfeiture of property, then the participating agency is entitled to an "equitable share" of the property. Deciding what is an equitable share is usually done by looking at the total amount of effort involved in the case and determining how much of that effort was contributed by each agency. By way of example, if a local police department works with the Drug Enforcement Administration (DEA) on a case and both the police department and DEA contribute an equal amount of time and effort to the investigation, then the net proceeds of the forfeiture would be divided equally with one-half going to the budget of the police department and one-half to the Department of Justice Assets Forfeiture Fund. In short, the sharing program requires direct participation by the State or local agency in the investigation resulting in the forfeiture -- this is not a grant program.

The second way in which a State and local agency can qualify for Federal sharing is to bring property it has seized under State law to a Federal agency for Federal forfeiture. If (1) the crime giving rise to the seizure was a violation of Federal law as well as State law (as is normally the case in the drug area) and (2) the property is forfeitable under Federal law, then the Federal law enforcement agency may "adopt" the State or local seizure for Federal forfeiture and sharing.

INTERNATIONAL SHARING

In 1986 and 1988, Congress passed legislation authorizing the Department of Justice to share forfeited property with cooperating foreign governments that assist in a case leading to a forfeiture. In addition, the United States has entered into several international agreements and mutual legal assistance treaties which contain provisions encouraging the sharing of forfeited property. Numerous cases are in progress in which federal investigators and prosecutors have identified hundreds of millions of dollars of forfeitable property located in foreign countries in which international sharing is anticipated. Decisionmaking authority for sharing forfeited proceeds with a foreign government rests with the Attorney General and the Secretary of State. The Department's Asset Forfeiture Office, Criminal Division, works to facilitate international sharing.

SUMMARY AND FUTURE OF FORFEITURE

The Federal forfeiture program has three important objectives:

(1) Law Enforcement. Forfeiture punishes crime by taking away the profits of illegal conduct and can immobilize crime syndicates by stripping away the cars, boats, airplanes, houses, currency and other properties which are essential to a large-scale criminal enterprise;

(2) Improved Intergovernmental Cooperation. Through the equitable sharing program, forfeiture has brought about dramatic advances in the level of cooperation among Federal, State, and local law enforcement agencies; and

(3) Revenue for the War on Drugs. When the law enforcement and cooperative goals of the forfeiture program are successfully pursued, a natural by-product is revenue which is pumped back into law enforcement so that forfeitures beget more forfeitures like a snowball rolling downhill.

Given the fact that large-scale forfeitures are a relatively new development and that the Attorney General has instituted a broad series of new forfeiture initiatives, the future for Federal forfeiture is very bright. White House, Congressional, and public support for the forfeiture program is strong and the Department of Justice is committed to realizing the full potential of forfeiture as a means of controlling crime.