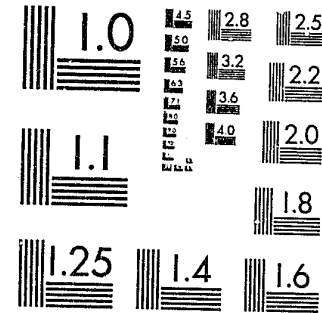


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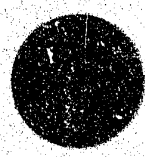
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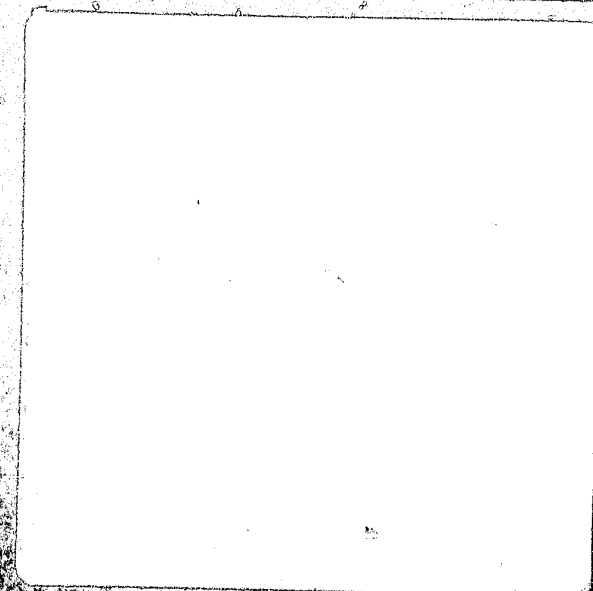
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National Assessment Program

USE OF FORFEITURE SANCTION
IN DRUG CASES

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WORKING PAPER FOR INTERNAL DISTRIBUTION ONLY

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ABSTRACT

The illegal drug trade in the United States is not only a serious social problem, but also has created unique law enforcement problems. Over the years, many anti-drug strategies have been adopted and subsequently rejected by law enforcement. Drug trafficking today is thriving and has taken on the proportions of big business, thus the strategies employed by law enforcement to combat it have also become more sophisticated. One such strategy used successfully by federal authorities is forfeiture. Forfeiture is an ancient legal practice of confiscating property used in criminal activity. In relation to drug crimes, it serves as a penalty, deprives drug organizations of their working capital, and supplements governmental resources. Federal authorities have found it to be an effective tool in the war against drugs.

The paper examines the extent to which states have tried to replicate the federal results with forfeiture, and why they have or have not succeeded. In some cases, state laws have hampered the efforts of local authorities to maximize the enforcement benefit of forfeiture; in others, organizational obstacles and misconceptions have thwarted the effective use of forfeiture. In contrast, selected jurisdictions throughout the country have succeeded in coordinating the enforcement and prosecutorial aspects of forfeiture with impressive results. This paper attempts to analyze the different state approaches and make recommendations for improvement.

1.0 INTRODUCTION

Forfeiture is an ancient legal concept dating back to biblical times. Originally, the weapon or other instrumentality of a crime was forfeited because the item was deemed "guilty" and capable of committing a future crime. Later, the practice of forfeiture was expanded to serve as punishment of the defendant by depriving the offender of the property used to commit the crime as well as the profits from the crime. Today, forfeiture is used nationwide as an additional criminal sanction to discourage drug offenses, to disrupt organized drug operations by seizing their assets and depleting their working capital, and as a means to generate added revenue for state and/or local governments. While initially used most frequently by the federal government to combat drug crimes, forfeiture statutes have now been enacted nationwide and are utilized at all levels of government.

In the battle against the drug trade, it is important that federal, state, and local authorities maximize their legal arsenal. Based on a number of resounding and lucrative successes reported by federal enforcement agencies, the National Institute of Justice, Office of Development, Testing, and Dissemination requested a study to ascertain the extent to which the forfeiture sanction has been adopted and implemented by the states. The information and data collected for this report may be helpful in identifying the extent to which state and local agencies have been able to replicate the federal success with forfeiture. More importantly, it identifies the obstacles that have prevented them from using forfeiture to their best advantage. This report provides a summary of state forfeiture statutes currently in force and a review of the forfeiture sanction as it is actually implemented by prosecutors and state and local law enforcement agencies.

1.1 Study Methodology

The study began with a literature review to help us identify many of the legal and practical issues surrounding the use of forfeiture as a criminal sanction for drug offenses. However, there is little published information on the practical aspects of forfeiture and the need for survey work was quickly recognized.

A telephone survey was then prepared to guide interviews with state Attorneys General about the use of forfeiture sanctions in their jurisdictions. We had hoped that the survey would produce state-level statistics and information on statewide practices. It soon became apparent, however, that these interviews were misdirected, because centralized statistics were not kept and Attorneys General do

not typically handle forfeiture prosecutions; rather, these cases are prosecuted at the county level. Consequently, the telephone survey was most often administered to the prosecutor in a county recommended by the Attorney General's office as being particularly active in utilizing the forfeiture sanction. One prosecutor was interviewed in each of the fifty states. A copy of the telephone survey instrument appears in Appendix A.

Meanwhile, a letter was sent to each state's Legislative Reference Service requesting a copy of the current statute providing for drug forfeiture. These requests were supplemented by asking each of the prosecutors interviewed to supply copies of written materials, and by library research to gather missing statutes. A chart detailing the provisions of these statutes was prepared and appears in Appendix B.

1.2 Organization of This Report

The remainder of this report is divided into four major sections. Section 2.0 provides a brief discussion of recent developments in the use of forfeiture as an additional criminal sanction for drug offenses. It outlines the nature of the narcotics problem and provides examples of successful seizure and forfeiture actions at the federal, state, and local levels. Section 3.0 presents a detailed analysis of the forfeiture statutes now in force in this country and, drawing on the responses of the prosecutors interviewed, an assessment of the actual implementation and effectiveness of forfeiture provisions. Section 4.0 discusses alternative strategies that law enforcement agencies and prosecutors have used in addition to the more typical cash and vehicle forfeitures. Section 5.0 concludes the report with recommendations based on the comments and observations of survey respondents, and on our independent review of the literature and existing statutes.

2.0 FORFEITURE: AN OVERVIEW

It cannot be denied that this nation's drug trade has attained crisis proportions and is still on the rise. The preponderance of illegal substances are smuggled into the United States from foreign countries—an estimated \$16-90 billion per year in marijuana, heroin, and cocaine enters this country from other nations such as Columbia, Mexico, and Thailand.¹ In addition, a sizeable amount of drugs are domestically grown. According to the Narcotics Control Digest, domestic production of marijuana is increasing by about 20 percent annually.² California is the nation's leading producer of marijuana. The crop is commercially cultivated in 43 of the state's 58 counties, and a conservative estimate of total crop value rests at approximately \$1 billion.³

Recent administrations have placed increasing emphasis on intensifying the attack on the narcotics industry. In jurisdictions across the country, drug task forces and special crime squads have been created to combat drug-related crimes. According to our survey respondents, the principal foci of local drug prosecutions are smuggling, trafficking, and street level distribution. (See Exhibit 1)

Drug enforcement officials are finding that statutory forfeiture provisions can be a powerful tool in the fight against the narcotics trade. Under forfeiture laws, law enforcement officials have seized vehicles, aircraft, and vessels responsible for transporting contraband. They have confiscated millions of dollars in cash used to purchase drugs. Authorities have traced the profits from drug transactions to investments, such as businesses and securities, and seized those assets. Forfeiture provisions allow officials to take the criminals' working capital and assets and give them to the government. Given that the drug trade is a multi-billion dollar industry, the potential impact of forfeiture practice is tremendous. It is important to note, however, that because forfeiture deprives defendants of their property, forfeiture proceedings are handled by the courts, where defendants, owners and lienholders are given an opportunity to contest the seizure and recover the property.

The federal Drug Enforcement Administration (DEA) has scored impressive marks when implementing the forfeiture provisions of federal laws. In fiscal year 1980, total seizures by the DEA exceeded \$30 million, and by November 1980, \$5 million in assets and capital had been successfully forfeited in the area of drug racketeering alone.⁴

Exhibit 1

Primary Focus of Respondent Office's Drug Prosecutions

Primary Type of Prosecution	Percent of Respondents
Smuggling/Trafficking	26
Street Level Distribution	26
Manufacturing	4
Cultivation	2
Organized Crime Involvement/Racketeering	0
No Single Focus	32
Other	6
Does Not Know	4
Total	100%

N=50
n=50

State and local enforcement agencies have increasingly participated in large federal drug conspiracy cases, where seizure of property and assets exceeding \$1 million are not unusual. For example, Baltimore enforcement agencies assisted in the apprehension and ultimate conviction of heroin kingpin Maurice D. (Peanut) King. This case led to the demise of one of the city's most sophisticated drug distribution networks and included the seizure of approximately \$1 million of property:

- a \$26,000 DeLorean sports car;
- a \$175,000 house; and
- jewelry, cash, and furniture.

King was convicted in federal court for operating a \$50 million-a-year ring in East Baltimore. The trial was noteworthy, since it was shown that King had laundered his drug profits through Atlantic City casinos, and from there had funneled the money into stocks, business improvements, real estate, and personal treasures.⁵

Much of the information on forfeiture now circulating among state legislatures highlights the millions of dollars seized in federal investigations and the potential for millions more stemming from drug trade. Thus, it is not surprising to see greater enthusiasm for implementing new forfeiture statutes where they were formerly lacking, and for modifying statutes that are outdated and overly restrictive. Indeed, more than half of the prosecutors responding to our survey reported that they use their states' forfeiture laws "very often." An additional 40 percent said they use forfeiture laws often or occasionally; no respondents did not use forfeiture at all. (See Exhibit 2.)

While many local authorities have increased their use of forfeiture, they have not made a concerted effort to organize the strategy. Indeed, over half of our respondents could not estimate the value of forfeited property, and only a handful maintained documented statistics. A few local jurisdictions have begun to adopt the techniques of the federal agencies in their pursuit of narcotics offenders ranging from street-level dealers to kingpins of organized crime and international trafficking. Where jurisdictions have integrated forfeiture into their drug enforcement activities, the results have been impressive. For example, the Fort Lauderdale Police Department in Florida has organized a forfeiture unit which aggressively pursues crime property. Exhibit 3 displays the total value of forfeited property amassed by the unit between the adoption of Florida's forfeiture statute in 1980 and November 1982.

Exhibit 2

Extent to Which Respondent's Office Uses
State Forfeiture Laws

Frequency	Percent of Respondents
Very Often (used in 2/3 or more of drug cases with property involved)	57
Often (between 1/3 and 2/3 of drug cases)	20
Occasionally (less than 1/3 of drug cases)	20
Not at All	0
Does Not Know	2
Total	99%

N=50
n=49
missing=1

Exhibit 3

City of Fort Lauderdale, Florida
Forfeiture Operations October 1980 to November 1982

No. of items		Value to city
Vehicles	89	\$ 360,500
Vessels	20	1,500,000
Airplanes	2	65,000
Cash	208	1,402,225
Other	26	19,100
TOTAL	345	\$3,346,825

Source: Robert Wennerholm, "Forfeiture," The Police Chief, 17 (February, 1983).

Similarly, in Baltimore, the police department has centralized its drug enforcement activities into a one-unit, 60-person narcotics task force at a cost to the city of approximately \$1 million per year. In the two years following its implementation in 1981, the unit claimed credit for:

- indicting 41 major narcotics leaders;
- confiscating \$1 million in cash and \$1.3 million in property;
- seizing 99 autos worth \$410,325;
- seizing 1,110 guns; and
- arresting 20,911 individuals on drug charges, nearly twice the number arrested in the two previous years.⁶

The potential for generating additional revenues for state and/or local government, while substantial given the size of the narcotics industry, is not the sole motivation for implementing a forfeiture statute. Survey respondents viewed forfeiture as a strategy that served multiple criminal justice goals, as shown in Exhibit 4. Nearly half (46 percent) noted a desire to impose an additional criminal sanction on defendants as a deterrent to future drug offenses; 42 percent used forfeiture as a means of disrupting organized drug operations. Twenty-four percent said they pursued forfeiture at the request of law enforcement, and 16 percent used it as part of a comprehensive anti-drug campaign. About one-fourth mentioned the prospects of significant financial gains; some observed that forfeiture serves as "restitution" to the public for the harm caused by the drug trade.

Exhibit 4

Respondent Office's Major Reason(s) for
Using Forfeiture in Conjunction with Drug Offenses

Office's Major Reason	Percent of Respondents
Additional Criminal Sanction	46
Disrupt Organized Drug Operations by Seizing their Assets and thereby Depleting their Working Capital	42
Means to Generate Added Revenue	26
Requests of Law Enforcement	24
Part of a Comprehensive Anti-Drug Campaign	16
Total	154%

N=50
n=43

Note: Total is greater than 100% since many respondents gave 2 or 3 answers. Tables does not include six respondents who gave "all reasons" as their answer, and one respondent who gave four answers as a response.

3.0 STATUTES AND PRACTICE

Forty-eight states, the District of Columbia, and three territories have adopted some version of the Uniform Controlled Substances Act to target drug crimes,⁸ but not all have adopted the Act's forfeiture provisions. Even where the forfeiture provisions have been adopted, they have been tailored to each state's particular needs. As a result, all fifty states have forfeiture laws addressing drug offenses, but the provisions vary markedly.⁹

The breadth of this variation is shown on the statutory chart in Appendix B, which presents the contents of each state's forfeiture provisions. (Forfeiture laws exist within the framework of a state's criminal and civil laws, so the full effect of an individual state's forfeiture provision may not be represented.) This section of the report analyzes the important features of these statutes: criminal activities covered, types of property subject to forfeiture, disposition of forfeited property, limitations to forfeiture provisions, administrative issues, and jurisdiction. Moreover, where available, we present relevant findings from the survey of prosecutors with regard to the actual implementation of forfeiture statutes.

3.1 Criminal Activities

Almost all states authorize forfeiture in conjunction with drug trafficking and manufacturing; four state forfeiture provisions also mention cultivation. Other states group drug crimes with other offenses (such as gambling, hazardous waste violations) for purposes of forfeiture.

Illinois and Louisiana have enacted, and others are considering, special drug racketeering statutes to address large criminal enterprises engaging in organized narcotics trafficking. This new direction in state laws represents an attempt by the states to follow the lead of the federal government in focusing on large conspiracy cases. The theory is that, by cutting drugs off at their source, successful pursuit of a few large cases will have a greater impact on public safety than pursuit of many "street level" cases.

The legislative declaration in the Illinois Narcotics Profit Forfeiture Act acknowledges the value of striking at the assets of criminal enterprises in order to ensure their demise:

Narcotics racketeering is a far-reaching and extremely profitable criminal enterprise. Racketeering schemes persist despite the threat of prosecution and the actual prosecution and imprisonment of

individual participants....It is therefore necessary to supplement existing sanctions by mandating forfeiture of money and other assets generated by narcotics racketeering activities. Forfeiture diminishes the financial incentives which encourage and sustain narcotics racketeering, and secures for the People of the State of Illinois assets to be used for enforcement of laws governing narcotics activity.

As will be discussed below, laws like this one also reflect a shift from simply seizing a car containing drugs, to pursuing complex financial investigations to uncover drug profits and assets purchased with laundered drug monies.

3.2 Type of Property

Once a forfeiture law has defined the type of criminal activity for which forfeiture may be invoked, it must define the type of property that can be seized. All states authorize forfeiture of drugs themselves, and usually provide for destruction of the drugs. Drugs are summarily forfeited, that is, a court proceeding is not needed to confiscate and destroy them. Some states, however, allow law enforcement to retain samples of drugs for evidence or for use in educational drug prevention programs; some permit pure drugs to be used for specific medicinal purposes (e.g., donations to hospitals).

State laws also define types of property which may not be illegal but may be seized because they are used to effectuate the crime. Common provisions allow for seizure of the following specified types of property:

- Conveyances (aircraft, vessels, vehicles) which are used to transport, conceal, or facilitate the offense (47 states);
- Raw materials, products, and equipment which are used in manufacturing, trafficking, and cultivation may be seized (42 states), as may the containers used to store or transport drugs (38 states);
- Drug paraphernalia, which are used to consume or administer the controlled substances (19 states); and
- Crime records and research, including formulas, microfilm, tapes, and data which may be used to violate drug laws (38 states).

In practice, vehicles and cash are the most frequent targets of forfeiture proceedings. A few states also pursue real and personal property and a growing number are adding traceable assets such as jewelry and houses to their forfeiture laws.

Vehicles. Vehicles comprise the largest single category of confiscated property associated with drug transactions. An example of how a vehicle might facilitate a sale is given below:

Suspect "C" uses his vehicle to pick up heroin from a "stash pad" and brings it to the buy location. The undercover officer observes suspect "C" remove the heroin from his new BMW and deliver the heroin to suspect "A." Suspect "C"'s BMW is subject to forfeiture.⁹

About 41 percent of the survey respondents reported that, by value, forfeited vehicles comprised 60 percent or more of all their forfeitures for 1983. (See Exhibit 5) Sheriffs in Florida have been particularly successful with vehicle forfeitures, as can be seen in the following examples:

- In Key West, the sheriff trades confiscated smugglers' vehicles and boats to a local auto dealer in return for new patrol cars.
- In Sebring, the judge gave the sheriff possession of a 12-passenger twin-engine airplane and a 1976 Dodge Power Wagon confiscated in a marijuana case.
- In Charlotte County, the sheriff seized two smugglers' boats. The boats were sold at auction and the proceeds used to purchase a new patrol boat for the department.
- The Marin County Sheriff's Office was given possession of a twin-engine Aero Commander plane that had been used by smugglers. It had originally sold for \$80,000, but its operating costs and capabilities were not suitable for law enforcement work, so the sheriff sold it and purchased a more appropriate model as his "eye in the sky."¹⁰

Cash. Many state statutes contain "assets" clauses, whereby monies (cash), negotiable instruments, securities, and other specified valuables may be ordered forfeited by the court. In most cases, these items may be ordered forfeited only "if they were furnished, or intended to be furnished by any person in exchange for a controlled substance." Because it is often difficult to prove that cash found during an arrest was used in an illegal transaction, some state laws raise a presumption that cash found in close proximity to controlled substances is forfeitable. The burden of proof is on the owner of the cash to convince the court that the court was not involved in a drug offense. Such presumptions raised by statutes are limited to circumstances in which there is a fair probability that the property had been used for illegal purposes.

The following is an example of a cash forfeiture:

"A" is a major supplier of heroin. "B" negotiates with "A" to buy four ounces of high grade heroin for \$40,000. "A" gives "B" an ounce

Exhibit 5

Breakdown of All Forfeited Property
(by value)

Type of Property	Percent of Respondents
	41
	24
	16
	6
Do not know	12
Total	100

N = 50
n = 49

* Sixty percent or more.

sample. "B" shows "A" an account passbook showing a balance of \$30,000 and gives a check to "A" in the amount of \$10,000. The check, the passbook, and the money in the account are seizable and forfeitable because they were used or intended to be furnished in exchange for a controlled substance. They were also used to facilitate the sale. II

Nearly one-fourth of the respondents to our survey indicated that 60 percent or more of their offices' forfeitures involve cash. Cash forfeitures provide a means for amassing considerable sums of money, as illustrated in the following examples:

- An individual in Iowa was charged with delivery and possession with intent to deliver. Police found slightly less than one pound of cocaine, 97 percent pure. A total of \$150,000 was forfeited.
- In a Louisiana county, the federal government prosecuted four individuals for possession of two pounds of heroin; \$96,800 in cash was given to the local government.
- In Mississippi, \$36,000 was forfeited from one known drug dealer.

Although clauses specifying the types of assets subject to forfeiture are fairly common among state forfeiture laws, a provision allowing the seizure of "anything of value" can be much more effective. For example, a drug raid in one large western town recently netted jewels and gold and silver bullion--items that could not have been seized under the more precise wording. A number of states have amended their statutes to incorporate the "anything of value" definition.

Real and Personal Property. A few states simply provide that any personal property used to violate the drug laws can be ordered forfeited by the court. Basically, such a proposition allows anything (except land) to be seized if it was used pursuant to the offense. Moreover, with one exception, these same states also explicitly permit confiscation of real property (an interest in land including ownership). Together, these are very broad provisions; they could cover items such as computers used to record drug transactions, farmland used to cultivate marijuana, or watches used to tell the time for a drug buy.

Traceable Assets. In addition to the more typical cash and vehicle forfeitures, the federal government has successfully pursued real estate and businesses that were purchased with illicit profits. While most state statutes do not allow for forfeiture of such investment property, "traceable assets," such as jewelry, land, diamonds, gold, houses, and airplane tickets, which are purchased with drug trade profits, are increasingly being added to state forfeiture laws. Although a financial investigation is often required to establish that money or assets are linked to the drug

trade, there is potential for a substantial amount of forfeitable property. As a number of survey respondents pointed out, broad definition of the types of property subject to forfeiture is very important to the law's effectiveness: if a drug offender can simply convert forfeitable property into non-forfeitable property, then he is "home free."

3.3 Disposition of Forfeited Property

An important and controversial aspect of a forfeiture law involves the disposition of property which has been ordered forfeited. According to survey respondents, arguments over who keeps the property have sometimes prevented the enactment of improved forfeiture laws. Most state statutes provide that the administrative costs of forfeiture—such as storing, manufacturing, and selling the property—are to be paid after any liens have been paid. Some further state that after the administrative costs are paid, the costs of law enforcement and prosecution must be paid. The debate arises on the disposition of the balance.

As shown on the statutory chart in Appendix B, many states provide that confiscated property goes to the state and/or local government treasury. In some states, law enforcement may keep the property for official use, but if the property is sold, or if the property is cash, then the monies go to the treasury. Some survey respondents felt that there is a direct correlation between allowing law enforcement to benefit from forfeitures and police interest in pursuing forfeiture. They argued that forfeiture proceedings can be time consuming and involve considerable paperwork to establish the chain of title, for example. Thus, a police department would be more likely to commit resources to forfeiture if the department gained an automobile for undercover work or cash to supplement the buy fund. Indeed, a few statutes not only allow the police department to keep all forfeited property, but explicitly state that forfeited monies and property cannot be used to reduce government appropriations for the police budget—which ensures that police will get a windfall from forfeitures.

Even if a state decides that the benefit of forfeiture should accrue to law enforcement—which not all states have decided—tension may arise within the law enforcement community itself. The conflict is most likely to arise between state and local agencies. A statement of the Pennsylvania Office of the Attorney General before the State Judiciary Subcommittee on Forfeiture and Crime Commission Legislation in March 1984 illustrates this tension. The Director of the Bureau of Narcotics Investigations and Drug Control, speaking on behalf of the Attorney General, urged passage of an amendment that would mandate the use of forfeitures

for state-level drug enforcement efforts. An example was used to illustrate the state's point of view:

Assume a major methamphetamine investigation leads to the seizure of a clandestine laboratory and substantial assets..., and the court ultimately forfeits the assets (\$250,000 cash) to the District Attorney for use in drug investigations. Even if the District Attorney were able to spend that amount for drug enforcement, the effect upon the Commonwealth's illicit drug trade would be minimal or non-existent. The vast majority of the clandestine drug labs seized in Pennsylvania over the past several years have in fact been located in rural areas....The office of Attorney General, as the central repository for forfeited assets and funds, would have the flexibility to expend those resources in those counties and in a manner which would be of most benefit to all the citizens of this Commonwealth.

While the argument for using forfeitures at the state level is strong, there are countervailing arguments for allowing local departments to share in the property. Local-level agencies have been hardest hit by tax-cutting measures and are hard pressed to keep street level drug crimes under control. In times of fiscal crunch, departments cannot get the items they need to keep up with criminals who are becoming increasingly sophisticated. Even agencies in large metropolitan areas have found that, without forfeiture, they cannot maintain the quality investigations needed to address drug crimes; forfeitures are essential to undercover operations since it is often difficult to obtain local financing for undercover vehicles, buy money, surveillance equipment, and other sophisticated technology. For example, one large southern department noted that drug traffickers in its city drove "fancy" cars. The department needed similar cars for undercover operations, but without forfeiture would never get them because it would be impossible to convince the city council to buy a Mercedes for the narcotics unit.

In response to the local-state conflict, several states have tried to balance the need to use funds most efficiently at the state level with the local need for resources. Some states allow seizures by state police to benefit state-level enforcement efforts, while local seizures go to local agencies; provisions for proportional split of proceeds on multi-agency efforts are often included. In a few states, forfeiture proceeds are split on a percentage basis between the state and local agencies; in others, a narcotics law enforcement fund is established to provide money to state and local agencies on an "as need" basis. The Rhode Island law is particularly interesting because it provides a maximum amount of forfeited property a department may keep, depending on the size of community served; the excess goes to a central fund where it is available to all departments.

In addition to governments and law enforcement, legislatures have provided for other interests in allocating forfeiture proceeds. A few states earmark a percentage of forfeitures to drug rehabilitation and prevention programs. New York's law provides funds for restitution to victims, while Washington's allocates 50 percent to the Criminal Justice Training Fund.

3.4 Limitations to Forfeiture Provisions

Forfeiture is a severe penalty as it deprives a person of his or her interest in property. For this reason legislatures often include exceptions to forfeiture so that innocent people will not lose their property. In addition, some states restrict forfeiture to more "serious" drug offenses.

Exceptions for Innocent Parties

Most exceptions to forfeiture laws have been designed explicitly to protect innocent people from forfeiture. The most common exceptions are found under provisions allowing forfeiture of conveyances. Three common exceptions are invoked when a person with an interest in the property neither knew nor consented to its illegal use:

- Innocent Owner--for example, if someone uses a stolen car in a drug transaction, the owner can recover it; similarly, if the owner loans his car to someone who then uses it to transport drugs (without the owner's knowledge), the owner can recover it.
- Innocent Lienholder--for example, if a bank makes a car loan to someone who uses the car in a drug offense, the value of the bank's loan will be protected.
- Innocent Common Carrier--for example, if someone flies on a commercial airline for the purpose of smuggling drugs, the airplane cannot be forfeited; similarly, if someone hails a cab on his way to a drug transaction, the taxi cannot be forfeited.

While these three exceptions are usually drafted in terms of forfeiture of conveyances, some state laws extend the protection to forfeitures of any type of property. Where a statute does not explicitly protect innocent parties with an interest in the property, the courts will usually provide such protection.

Exclusion of Lesser Drug Offenses

A number of states explicitly limit application of the forfeiture statute to exclude lesser drug offenses. In some states, the entire forfeiture statute applies only to felony drug offenses; in others, only forfeiture of conveyances is limited to

felonies. Several states exclude the offense of possessing a controlled or counterfeited substance without a valid prescription, which is usually a misdemeanor. A number of states exclude drug offenses involving a specified minimum amount of drugs, although the amount of drugs necessary to invoke forfeiture varies. For example, Kentucky law states that conveyances are not subject to forfeiture for "any offense relating to marijuana"; Pennsylvania provides that a conveyance shall not be confiscated for possession or distribution (but not for sale) of a small amount of marijuana; California's exclusion includes a range of drug amounts from marijuana to heroin.

The purpose of establishing such exclusions is to balance the severity of forfeiture with the seriousness of the offense. A criticism of forfeiture which is sometimes raised is that the police will go "seizure crazy," particularly in states where the department may keep the property. The issue is aptly summarized in the words of one law enforcement officer: "I sure would like to get a (forfeited) boat, and I know we could find a couple of kids smoking pot on one--but the state law and the local prosecutor would never let us go after that kind of a case."

3.5 Administrative Issues

Another area addressed by forfeiture laws is that of administration. This area generally entails five broad topics:

Who initiates proceedings. Most states provide that the prosecutor shall file forfeiture proceedings. The Florida law allows police to hire an attorney for this purpose. This approach tends to streamline the process, because prosecutors are often too busy with criminal cases to take on forfeitures and do not usually enjoy working on civil forfeiture proceedings. A couple of states authorize the city solicitor to initiate forfeiture proceedings, for the same reason.

Time of filing. Many states provide that forfeiture proceedings are to be filed "promptly," while some specify a given amount of time. Times range from 15-90 days, with the median being about 30 days from seizure.

Provisions for notice and hearing. Most state forfeiture laws establish procedures for notifying people who may have an interest in the property and who may want to contest the forfeiture at the court hearings. Provisions for notice and a hearing are required by constitutional considerations for due process; indeed, a few

forfeiture laws lacking these provisions have been struck down as unconstitutional and had to be amended.

Filing an answer. As shown on the statutory chart, some states provide that, after the government has filed a forfeiture proceeding, anyone with an interest must file an answer to contest the confiscation within a certain amount of time. If no one files an answer within the stated period, then the property may be forfeited automatically, or a hearing is held and the property can then be ordered forfeited. Some states do not specify a time to answer; presumably, the time used is 20 days, as provided in the Rules of Civil Procedures.

Actions in replevin. Most state laws prohibit an action in replevin—that is, a suit by the owner of the property claiming that it was wrongfully taken. The reason for barring this type of lawsuit is to avoid multiple suits on the same subject and to consolidate the entire matter at the forfeiture hearing. Four states, however, permit someone contesting a forfeiture to recover possession of the property if a bond is posted for the value of the property, or twice the value of the property in two states, pending the forfeiture hearing. If the property is not ultimately ordered forfeited by the court, the person gets the bond back; if the court does order the item forfeited, the bond for the property's value, or the property itself (if it has not deteriorated), goes to the government. New Jersey allows bonds where deprivation of the property would cause a hardship to a party who is not the defendant.

3.6 Jurisdiction

Forfeiture laws are based on the theory that the property used in the offense is "guilty" in itself—independently of the defendant or the owner—and is therefore capable of repeating its illegal use and should be removed from society. An example would be forfeiting a knife used in a homicide. Courts may take jurisdiction over property and adjudicate rights within that property without having jurisdiction over the people involved. For example, a court in State A may hear a forfeiture proceeding concerning a car seized in State A even though the owner is in State B. This type of property jurisdiction is called in rem jurisdiction. The benefit to having in rem jurisdiction is that the court determines whether or not the property is "guilty" regardless of whether or not the defendant is guilty. A proceeding in rem can begin immediately, independently of the defendant's criminal trial.

There is a second type of jurisdiction, called in personam. Where a forfeiture proceeding is in personam, the defendant's guilt is at issue. The defendant must be

convicted in order to bring the forfeiture proceeding. The advantage is that the court can order the forfeiture of any of the defendant's illicit property, including items not within the physical jurisdiction of the court. For example, if a state court found that the defendant's bank account contained profits from drug trade, it could forfeit that money even if the bank account was in another state. If the jurisdiction was in rem, this would not be possible because the court has no authority over property that is not physically within its geographical jurisdiction. New York is the only state that specifies that all forfeiture proceedings are in personam. One reason given for this provision by the legislative authors is that drug traffickers operating in states with tough forfeiture laws are moving their assets out of state so that courts with in rem jurisdiction cannot reach them.

Confusion over a court's particular jurisdiction exists because most forfeiture provisions do not authorize one or the other type of jurisdiction. Only five laws specifically state that the court has in rem jurisdictions; as noted above, New York provides for in personam jurisdiction; and, Alaska authorizes either type.

Another way to determine the jurisdiction of the court is to note whether the law is civil or criminal. Criminal forfeiture is post-conviction forfeiture and is usually deemed to be in personam so that all the criminal's assets can be reached. Until 1970, criminal forfeiture with in personam jurisdiction was prohibited by federal statute. Although the federal Continuing Criminal Enterprise statute now contains a criminal forfeiture penalty and is used to target organized drug trafficking, none of the state laws specifically provides for criminal forfeiture. At the same time, very few states explicitly provide that the forfeiture proceedings are civil.

An alternative way to judge the nature of the proceedings is to examine the standard of proof required of the government in pursuing forfeiture. The highest standard of proof—and therefore the one used for criminal convictions—is "beyond a reasonable doubt." In contrast, civil cases are usually determined by a "preponderance of the evidence"—that is, the plaintiff must present enough evidence to "tip the scales" in his or her favor. A more stringent civil standard sometimes used is "clear and convincing evidence"—the plaintiff must provide enough evidence to convince the court that the facts are as he or she says they are. Again, most laws do not specify how much evidence is needed to result in a forfeiture. Six states establish a "preponderance of the evidence," one state uses "clear and convincing," and three states use "beyond a reasonable doubt."

In short, one might expect that statutes would provide either 1) civil forfeiture with in rem jurisdiction proved by a preponderance of the evidence; or 2) criminal forfeiture with in personam jurisdiction proved beyond a reasonable doubt. In actuality, most state laws are completely silent on these issues; only New Hampshire addresses all three points explicitly and consistently. Other states make only one specification, such as proceedings are in rem or are civil; some "mix and match" by using a beyond a reasonable doubt standard or requiring a conviction in a civil proceeding. New York is one such example. New York's new statute offers a civil proceeding, in personam, and establishes a clear and convincing standard of proof. There is, however, a fear in the New York criminal justice community that the law will be found unconstitutional because it violates double jeopardy. In essence, the argument is that, because the forfeiture law is in personam and against the defendant, the defendant will be tried twice for the same conduct, at separate trials, each involving penalties. Supporters of the law are convinced of its constitutionality and feel that similar laws have been upheld in the past.

A final point which should be raised is whether persons who contest a forfeiture action have a right to a jury trial or whether all forfeiture cases are to be decided solely by a judge at a bench trial. California and New York explicitly provide for a jury trial and Alabama requires a jury option only for forfeitures of money. Alaska prohibits jury trials. Washington has a very unique provision on this point: forfeiture proceedings are conducted before "the chief law enforcement officer of the seizing agency," his designee, or an administrative law judge. A party contesting the forfeiture may remove the proceedings to a court if the property in question is valued at more than \$500. This hearing procedure is particularly unusual because the seizing agency can keep any property ordered forfeited for official use; if the property is sold, the government of the seizing agency is entitled to 50 percent of the proceeds.

It is important to note that some of these laws were enacted when the only possibility for forfeiture was civil and in rem; others are very new and will surely be tested in the courts. In addition, the distinction between in rem and in personam may be waning and may lose its importance in the future. These issues may only be resolved by watching the response of the judiciary to the laws as they are used and, in turn, examining the legislative response to case decisions.

4.0 ALTERNATIVE STRATEGIES

In addition to the more typical cash and vehicle forfeitures, law enforcement agencies and prosecutors have developed three strategies that serve as alternative routes to the same goal. These strategies are the "reverse sting," the "buy back," and plea bargaining.

In typical drug-related investigations, law enforcement concentrates its activities on the individuals responsible for distributing or selling controlled substances. During an arrest, controlled substances are seized and retained for evidence, after which any contraband is destroyed. In the usual buy-bust situation, the law enforcement officer buys drugs from the defendant and makes the arrest. In a "reverse sting" operation, however, the buyer (rather than the seller) of the controlled substance becomes the focus of the investigation. For example, federal authorities have executed large reverse stings where criminals looking for a drug source approach undercover agents. The buyers have even provided the agents with credit references—records of their previous drug buys! A sale is then negotiated and when the buyer arrives with the purchase money, he is arrested and the money is seized. Pending a hearing, the cash may then be forfeited. Reverse stings can be extremely lucrative, even at the local level as was found in Texas, where \$150,000 is currently pending in one case involving a cocaine transaction. Of course, reverse stings must be handled carefully, since the government may have to show that the defendant-buyer had the "predisposition" to commit the crime and was not entrapped by police. Moreover, the detectives must be cautious to only create an opportunity for the defendant to commit the crime and not offer a crime. Criminal solicitation is itself a crime and the officers could be prosecuted.

The "buy back" strategy can be used in cases involving small amounts of controlled substances and/or a vehicle of little value. Many law enforcement agencies seize a vehicle or personal property as a means of imposing an additional penalty for criminal activity, but in some cases, proceeding with a forfeiture hearing might be too costly or time consuming to justify filing an action. An alternative strategy is to simply allow the defendant to "buy back" his or her property. Buy back money is not viewed as a fine, but rather as payment in lieu of forfeiture. Buy backs are also useful and sometimes necessary in cases involving innocent co-owners. In those cases the criminal-owner can be penalized through a buy back, without harming the innocent co-owner.

Formal forfeiture proceedings can also be waived via plea bargaining. This type of agreement most often involves reducing the charge from a felony to a misdemeanor, and requesting that the defendant give up the personal property involved in the crime, such as a car. Plea bargaining is often used as a remedy in cases involving a dispute over the ownership of property, where it is viewed as less time consuming and more equitable than the formal forfeiture hearing. The opponents of plea bargaining believe it is an avoidance tactic for those who dislike the formal hearing; it has also been suggested that plea bargaining can coerce defendants into pleas.

While the survey results suggest that the "reverse sting" is becoming an increasingly popular strategy, "buy backs" and plea bargaining for forfeiture purposes still seem fairly rare.

5.0 CONCLUSIONS AND RECOMMENDATIONS

The majority of our survey respondents felt that the law enforcement community is aggressive about pursuing forfeiture. Prosecutors believe forfeiture laws are effective and that prosecutorial resources committed to forfeitures are adequate. They are generally satisfied with the use of forfeiture in their jurisdictions. Given the fact that many forfeiture statutes are fairly new and extremely complex, this is an unusually positive response. Still, a number of respondents raised issues and offered suggestions that merit consideration.

A large percentage of the respondents mentioned the need to revise existing forfeiture statutes. (See Exhibit 6) The most common recommendations concerned clarification of vague or ambiguous statutes:

- Statutes fail to establish clear procedures for condemnation of property.
- Statutes are burdened with a multitude of complex legal procedures and due process considerations.
- Conflicting legislative provisions should be clarified.
- Statutes should facilitate fast turnaround; some cases take as long as two years.
- Statutes should clarify whether forfeiture is civil, criminal, or a combination, (respondents would prefer a civil law).

Many of the recommendations are more narrowly defined, such as a need to broaden forfeitable items to include real estate and business entities. Specific suggestions are listed below:

- Allow assets that represent the profits of drug deals to be forfeited (e.g., house, other real estate). The statute should leave the dealer broke and in jail.
- Adopt federal statute standards concerning money. The court should be able to forfeit any money used or intended for use in illegal activities, or any money which is the fruit or instrumentality of drug business.
- Allow anything that can be traced back to drug use to be forfeitable, including money, negotiable instruments, proceeds, securities.

Some respondents were dissatisfied with the statutory disposition of forfeiture proceeds. These respondents felt that forfeiture proceeds in drug cases should go toward enhancing enforcement of drug laws. One respondent suggested that the

Exhibit 6

Recommendations for Improving Current
State Forfeiture Laws

Recommendation	Percent of Respondents
None, satisfied with present law	14%
Procedures need to be clarified, simplified, or otherwise improved	26%
Definition of forfeitable property should be expanded	22%
Proceeds from forfeiture should go to the enforcement of drug laws	10%
Jurisdiction needs to be clarified (civil jurisdiction is preferred)	8%
New provisions to allow for increased financial investigation are needed	4%
Do Not Know	16%
Total	100%

N=50
n=50

monies go to a drug racketeering investigational fund. Four percent of the respondents would like new provisions facilitating financial investigations to trace laundered drug trade profits. They suggested that these provisions could be similar to those found in revenue laws.

Some of the respondents' suggestions reflect a desire to strengthen the power of the forfeiture statute, both as a criminal deterrent and as a source of revenue, sometimes at the expense of innocent individuals. For example, while innocent owners and lienholders are usually protected by statute, some prosecutors surveyed would prefer to lessen these standards in order to enhance the opportunity for forfeitable property. One prosecutor even mentioned that the state, rather than the lienholder, should have priority over an item, which is clearly not in keeping with accepted practice.

Because many of the forfeiture statutes targeting drugs are quite new, respondents noted problems in implementing some of the formal procedures beginning with the seizure and following through to the forfeiture hearing. For example, it is usually the police officer or sheriff who initiates, through seizure, a potential forfeiture case, and it is often left to that officer to follow up a chain of title or trace the personal proceeds. This follow-up involves a lot of paperwork and can become complicated. Law enforcement agencies have had to hire professional financial investigators to help on particular cases. Indeed, the difficult process of tracking the financial profits of drug traffickers and dealers has been exemplified by the federal Drug Enforcement Administration, whose efforts to curb drug trafficking and organized crime have included joint prosecutions with the IRS, the Customs Office, and the freezing or seizure of narcotics-derived assets from abroad and domestically held assets.

Another problem mentioned by survey respondents is that, while the majority of forfeiture proceedings are civil in nature, most prosecutors assigned to these cases are either unskilled and disinterested in civil proceedings, overburdened with criminal prosecutions, or prefer to settle out of court.

Although many respondents were satisfied with their forfeiture efforts, the survey results revealed that few jurisdictions had organized and coordinated their approach. As noted earlier, the majority of respondents do not keep records on the amount of property confiscated by their office. A number of serious problems were noted by respondents:

- police do not understand (or do not take the time to complete) the paperwork necessary to file an action;
- prosecutors are confused by the process and turn down the cases;
- police departments fail to supervise the forfeiture initiatives of a individual officers, thus leaving the door open for abuses;
- cases are improperly screened and the state pays for storage costs while in the end the bank or the defendant gets the property; and
- many of the bidders at the auctions of forfeited property turn out to be drug dealers.

The few jurisdictions that have formalized their approach to forfeiture have avoided these problems and received a tremendous financial payoff for their efforts. While some respondents argued that formalization was only warranted in a state like Florida, federal efforts are impressive nationwide as are local efforts such as those found in Baltimore, Maryland and Wayne County, Michigan. The drug trade is thriving nationwide, and the opportunity for the use of forfeiture as an intervention mechanism is immense.

One obvious solution to the problem mentioned by respondents involves training, particularly at the local level, for police officers, prosecutors, and judges as well. In conjunction, several respondents noted a need to encourage greater communication among all segments of the criminal justice community, with the purpose of clarifying each agency's responsibilities and goals. Specific suggestions include:

- creating forfeiture units so that one investigator/prosecutor team handles everything;
- encouraging closer relationships between the district attorney's office, state narcotics bureau, state attorney general's office, and legislators; and
- requesting a policy guidelines memorandum from the state attorney general's office.

These recommendations were mentioned repeatedly throughout the survey, and merit attention. There are several federal initiatives that would be helpful to local jurisdictions. First, workshops for police, prosecutors, and judges were recommended both for training purposes and cross-fertilization. Second, existing forfeiture units could be evaluated and assessed for replication. For example, the attorney heading up the Ft. Lauderdale forfeiture unit is confident that their unit and success can easily be transplanted elsewhere. Finally, existing forfeiture manuals

might be combined to develop a generic forfeiture manual, which would be useful nationwide.

In sum, forfeiture is potentially an extremely effective tool for curbing drug-related crimes. The goal of dramatically reducing the inordinately high crime rates in this area, however, rests at least to some degree on the ability to create forfeiture statutes that can be understood by the entire criminal justice community. Also, because the proceeds from forfeitures can become extremely lucrative, it is important to ensure that statutes limit the potential for abuse and that the cash and properties obtained through forfeitures are used in a productive manner, for the benefit of the public. The desires to curb crime and raise additional funds for state and local government must be balanced with the needs to follow the true intent of the law while also promoting justice.

Footnotes

1. "Battle Against Drugs Takes to the Seas," 84 U.S. World News Report 69-70 (March-April 1978).
2. Carla DeDominicis. "Prosecutors Pounce on Drug Traffickers' Assets," California Lawyer 28-31 (April 1982).
3. Ibid.
4. Office of the Attorney General, State of Wyoming, "Internal Memorandum: Processing a Vehicle Forfeiture Case Under the Wyoming Controlled Substances Act," (no date).
5. Ann LoLordo, "City narcotics squad seeks 'containment'; But disrupting trade is better," The Sun, Sunday, September 18, 1983.
6. Ibid.
7. The exceptions are New Hampshire and Vermont.
8. The Vermont law addresses only the forfeiture of the actual drugs.
9. Office of the Attorney General, State of California, Department of Justice, "Asset Seizure and Forfeiture Manual," (1984).
10. "Florida Sheriffs Benefit by Selling Smugglers' Vehicles," Narcotics Control Digest 6-7 (September 6, 1978).
11. Office of the Attorney General, State of California, Department of Justice, "Asset Seizure and Forfeiture Manual," (1984).

Appendix A
TELEPHONE SURVEY INSTRUMENT

FORFEITURE SURVEY

Name	Title
Office/Division	
Address	
Telephone Number	Date

- How would you characterize the primary focus of your state's prosecution of drug offenses? (CHECK ONLY ONE)
 - cultivation
 - manufacturing
 - smuggling/trafficking
 - organized crime involvement
 - street level distribution
 - other (SPECIFY): _____
- To what extent does your office use forfeiture laws as part of its anti-drug effort?
 - very often (2/3 or more of drug cases with property involved)
 - often (between 1/3 and 2/3)
 - occasionally (less than 1/3)
 - not at all -----> | GO TO QUESTION 7 |
- What are your office's major reason(s) for pursuing forfeiture in conjunction with drug offenses? (CHECK ONLY ONE OR TWO)
 - requests of law enforcement agencies
 - additional criminal sanction to discourage drug offenses
 - means to generate added revenue for state and/or local government
 - disrupt organized drug operations by seizing their assets and thereby deplete their working capital
 - part of a comprehensive anti-drug campaign
 - other (SPECIFY): _____

- Please estimate the total value of property, including cash, forfeited for drug offenses in your jurisdiction in each of the past four years. Please note whether the dollar values you provided are estimates (E) or documented (D).
 - \$ _____ 1983
 - \$ _____ 1982
 - \$ _____ 1981
 - \$ _____ 1980
- For 1983 (or the most recent year for which data are available), please percentage the total value of forfeited property you entered in Question 4 among the types of property listed below. For example, if the total value was \$1 million and aircraft seized were worth \$100,000, enter 10% for aircraft in the list below. Make sure that your percentages total 100%.
 - ____ % aircraft
 - ____ % vessels
 - ____ % motor vehicles
 - ____ % cash .
 - ____ % negotiable instruments
 - ____ % real estate
 - ____ % commercial businesses
 - ____ % other (SPECIFY): _____
 - 100% TOTAL
- Please provide one or two brief descriptions of significant drug cases that your office has prosecuted in which property was forfeited. (If available, attach media articles and/or reported cases.)

7. How would you rate the effectiveness of the provisions of your state's forfeiture law in terms of helping your office to pursue property and expedite forfeiture proceedings?

- very effective WHY?
 effective
 somewhat effective
 very ineffective

8. How would you rate the aggressiveness with which law enforcement in your jurisdiction seizes property for forfeiture in drug cases?

- very aggressive WHY?
 aggressive
 somewhat unaggressive
 very unaggressive

9. How would you rate the adequacy of the prosecutorial resources committed to forfeiture proceedings in your jurisdiction?

- very adequate WHY?
 adequate
 somewhat adequate
 very inadequate

10. On the whole, how satisfied are you with your jurisdiction's use of forfeiture in anti-drug efforts?

- very satisfied WHY?
 satisfied
 somewhat dissatisfied
 very dissatisfied

11. If you feel that your state's use of forfeiture for drug offenses could be improved (e.g., statutory amendments, law enforcement response), please provide two or three recommendations for improvement.

12. As mentioned in the cover letter, the National Institute of Justice intends to develop a report on state uses of forfeiture laws in drug cases. Please indicate whether the report may identify your state with respect to your responses to this questionnaire. (CHECK ONLY ONE)

- Yes, my state may be identified in the report.
 No, my state may not be identified with respect to my response to item no. ___ on the questionnaire.

Thank you very much for your cooperation. Please return the completed questionnaire to:

Lindsey Stellwagen, Esq.
Abt Associates Inc.
55 Wheeler Street
Cambridge, MA 02138

Appendix B
STATE STATUTORY ANALYSIS

STATE STATUTORY FORFEITURE PROVISIONS FOR
CONTROLLED SUBSTANCES VIOLATIONS

Introductory Note

Despite the fact that many states have adopted the Uniform Controlled Substance Act, state forfeiture provisions vary widely as shown in the following chart.

The chart divides key provisions into six sections:

- 1) Type of Crime shows the nature of the violation for which forfeiture is available. Two states have special laws addressing drug racketeering which focus on organized and habitual drug crime. Several states group drug crimes with other contraband offenses such as gambling and alcohol violations. A few states allow forfeiture for felonies which include most drug offenses.
- 2) Type of Property which is forfeitable typically includes conveyances (aircraft, vessels and vehicles) and cash. Some states allow forfeiture of profits and proceeds traceable to drug trafficking as well as "anything of value" furnished in exchange for drugs or used to facilitate drug transactions. A few states permit forfeiture of personal property (anything except an interest in land), and a couple include real property (an interest in land).
- 3) Presumptions are raised in some states which provide that money found in close proximity to drugs is presumed forfeitable. This means the owner must show the court that the money was not used illegally. This serves to facilitate forfeitures.
- 4) Exceptions to forfeitures are provided to protect innocent owners, lienholders, and common carriers (e.g., taxis, commercial airliners) and also to limit the scope of forfeiture by excluding less serious drug offenses.
- 5) Proceeds of forfeiture--including property, cash, and sale proceeds--are distributed in a variety of ways. Forfeitures often go to government treasuries or specified agencies, to school districts, or to law enforcement. Some states give a percentage to one agency and the balance to another; others allow law enforcement to keep forfeited property for official use but stipulate that if the item is sold the proceeds go to the general treasury.
- 6) Administrative Provisions are briefly presented here. Many laws prohibit the owner from beginning a separate lawsuit to recover property on the grounds that it was wrongfully taken (no replevin). This prevents "duplicating" the forfeiture proceedings. Some states provide that if no one contests the forfeiture action within a specified time, then the court may order forfeiture of the property (default). In states without this provision the 20 days to answer as provided in the Rules of Civil Procedure is typically used.

FOOTNOTES

1. Firearms.
2. Must be a felony offense for conveyance forfeiture.
3. Rebuttable presumption: person in possession of seized property is owner thereof.
4. Less than 28.5 grams of a controlled substance, 10 lbs. dry weight marijuana, peyote, or psilocybin.
5. 50% to Department of Mental Health for prevention programs. Rest covers costs of law enforcement and prosecution of case, any balance to Narcotics Assistance and Relinquishment by Criminal Offender Fund (to finance state and local activities particularly financial investigator positions).
6. Authorized for Class I Public Nuisances: trafficking, manufacturing, cultivation of drugs; gambling, prostitution, fencing, child pornography, felonies.
7. Proceeds to the state except court may give property proceeds to seizing agency or victim of the public nuisance.
8. Presumption that conveyance in which contraband is found was used to facilitate illegal act.
9. Court may order 25% of proceeds to be paid to an informant or allow any government agency to keep the property.
10. "Narcotics Profit Forfeiture Act" permits forfeiture of profits, proceeds, property interest, security, claims against, and contractual rights. Proceeds are distributed: 50% for local narcotics law enforcement (for a state seizure to the Drug Traffic Prevention Fund); 12.5% to narcotic prosecution; 12.5% to appeals; and 25% to the state Drug Traffic Prevention Fund.
11. Under contraband provision for conveyances, law enforcement may keep or sell property, proceeds go to the county government. Under Drug Paraphernalia Act, law enforcement may keep the property. Chart shows distribution for Illinois' Controlled Substances Act and Cannabis Control Act.
12. The motor vehicle forfeiture law authorizes forfeiture for transport of drugs, stolen property and hazardous waste.
13. Law Enforcement may keep motor vehicles for one year.
14. Law Enforcement agencies may ask the court for motor vehicles.
15. "Drug Racketeering and Related Organizations" law permits forfeiture of all property. Distribution: 50% to the state; 25% to the seizing law enforcement agency for narcotics enforcement; 25% to the district attorney's office or 6% fund.
16. Distribution of sale proceeds: 40% to local criminal courts; 60% to law enforcement for narcotics investigation. For state level seizures, 60% to the Bond Security and Redemption Fund and any excess to the Drug Enforcement Seizures and Forfeitures Fund for state law enforcement equipment for drug investigations.
17. No sequestration or attachment available.
18. Presumption: owner of a conveyance used for three or more illegal drug incidences knew or should have known of its illegal use.
19. Distribution of sale proceeds: 50% to the prosecuting agency; 50% to the seizing law enforcement agency.
20. Possession of LSD, peyote, mescaline, DMT, psilocyn, psilocybin, marijuana, or an offense limited to use of any controlled substances.
21. Until 10/1/85: 25% to the state and 75% to the seizing law enforcement budget. After 10/1/85: 50% to the state and 50% to law enforcement.
22. Must be a felony drug offense.
23. Distribution of sale proceeds: 50% to licensed hospitals and drug treatment facilities for drug-related physical/psychological disorders and licensed drug analysis centers; 50% returned to the appropriate state agency.
24. Deadly weapons.
25. Presumption that a conveyance is the property of the defendant from whom it was seized.
26. Where person arrested for certain drug violations is in possession of \$300 or more in cash, presumption arises that the cash is traceable to the drug transaction.
27. Conviction raises a rebuttable presumption of illegal use.
28. Law Enforcement may keep a motor vehicle for one year.
29. The motor vehicle forfeiture law authorizes forfeiture for unlawful transport, possession, or trafficking of controlled substances.
30. Proceeds from forfeited motor vehicles to state or local government. Other property proceeds distributed: 1. restitution to victim of crime which is the basis of the forfeiture; 2. restitution to any victim of defendant's crimes; 3. any unpaid criminal fines of the defendant; 4. 75% to the substance abuse service fund if the crime was a drug felony; 5. 25% to the government of seizing agency.
31. Possession of counterfeit drugs.
32. Forfeiture is authorized for permitting a "felony drug abuse offense," which is a first degree misdemeanor.
33. Transportation or possession of a controlled substance in any conveyance.
34. No conveyance forfeiture for creating or delivering counterfeit drugs.
35. Small amount for personal use (30 grams of marijuana or 8 grams of hashish).
36. Forfeited property/proceeds: to the Attorney General for state level seizures or district attorney for local/county seizures.
37. Any property.
38. Forfeited cash and sale proceeds: 1. state law enforcement may keep \$1500 of each forfeiture up to a maximum of \$10,000 per calendar year (CY); 2. law enforcement in cities with population over 20,000 gets \$1,000 per forfeiture and maximum of \$7,500 per CY; 3. all other law enforcement agencies get \$500 per sale and maximum of \$5,000 per CY; 4. excess goes into a state account for law enforcement and, if the balance is over \$25,000, any department may request funds.
39. Exceptions for forfeiture include amounts less than or equal to: one pound of marijuana or hashish; four grains of opium or morphine; two grains of heroin; ten grains of cocaine; or fifty micrograms of lysergic acid diethylamide (LSD).
40. Forfeiture monies going to the state are to be used for treatment and rehabilitation of drug addicts. Forfeited property goes to the Commissioner on Alcohol and Drug Abuse. However, forfeited conveyances may be given by the Attorney General to: 1. law enforcement, but if item is sold, proceeds are split 50:50 between state and local government; 2. specified state agencies, but if sold, proceeds go to the state; 3. to state treasury.
41. Forfeited cash and sale proceeds go to the Drug Control Fund.
42. Not more than 10% goes to drug prevention and treatment.
43. Any government agency may apply for forfeited property.
44. Law enforcement may keep motor vehicle.
45. When owner of a conveyance is arrested, conveyance must be seized within ten days of arrest.
46. Proceeds distributed: 50% to Criminal Justice Training Fund and 50% to government treasury of seizing agency.
47. Forfeiture of conveyances used to transport property or weapons used or received in the commission of a felony.
48. Buildings.

END