

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

Asset Seizure and Forfeitures

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



House Document No. 7

**COMMONWEALTH OF VIRGINIA
RICHMOND
1989**



COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

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IN RESPONSE TO
THIS LETTER TELEPHONE
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ROBERT E. COLVIN
EXECUTIVE DIRECTOR

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HOWARD P. ANDERSON
ELMO G. CROSS, JR.

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ATTORNEY GENERAL'S OFFICE
H. LANE KNEEDLER

October 18, 1988

**TO: The Honorable Gerald L. Baliles, Governor of Virginia,
and Members of the General Assembly:**

House Joint Resolution 40, agreed to by the 1988 General Assembly, directed the Virginia State Crime Commission to "(1) evaluate the effectiveness of Virginia's Asset Seizure and Forfeiture Program in criminal cases, (11) evaluate methods to improve said program, and (111) make any recommendations the Commission finds appropriate" In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Virginia's Asset Seizure and Forfeiture Program.

Respectfully submitted,


Elmon T. Gray
Chairman

ETG·tes

**MEMBERS OF THE
VIRGINIA STATE CRIME COMMISSION**

From the Senate of Virginia:

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Studying
Drug Asset Seizures and Forfeitures

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Senator Howard P. Anderson
Senator Elmon T. Gray
Delegate Raymond R. Guest, Jr.
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The subcommittee wishes to express its sincere appreciation to the Attorney General of Virginia, Mary Sue Terry and her staff, particularly Stephen B. Rosenthal, Deputy Attorney General; and John B. Russell, Jr. Senior Assistant Attorney General, for their invaluable assistance and advice in conducting this study.

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**SUBCOMMITTEE STUDYING ISSUES PERTAINING TO
DRUG ASSET SEIZURE AND FORFEITURE**

1. AUTHORITY FOR STUDY

House Joint Resolution 40, agreed to by the 1988 General Assembly, directs the Virginia State Crime Commission to "(1) evaluate the effectiveness of Virginia's Asset Seizure and Forfeiture Program in criminal cases, (11) evaluate methods to improve said program, and (111) make any recommendation the Commission finds appropriate". (See Appendix A).

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report and make recommendations on all areas of public safety and protection". Section 9-127 of the Code of Virginia provides that "The Commission shall have the duty and power to make such studies and gather information and data in order to accomplish its purposes as set forth in §9-125. . . , and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 of the Code of Virginia authorizes the Commission "to conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The VSCC, in fulfilling its legislative mandate, undertook the Drug Asset Seizure Study as directed by House Joint Resolution 40.

2. MEMBERS APPOINTED

On April 19, 1988, Senator Elmon T. Gray of Sussex County, Chairman of the Virginia State Crime Commission, appointed Speaker of the House of Delegates, A. L. Philpott, to serve as the chairman of the Subcommittee on Drug Asset Seizures and Forfeitures. Members of the Crime Commission who served on the subcommittee are:

Speaker A. L. Philpott of Henry, Subcommittee Chairman

Senator Elmon T. Gray of Sussex

Senator Howard P. Anderson of Halifax

Delegate Raymond R. Guest, Jr. of Front Royal

Delegate Warren G. Stambaugh of Arlington

Delegate Clifton A. Woodrum of Roanoke

Mr. Robert F. Horan, Jr. of Fairfax

Mr. H. Lane Knedler, Chief Deputy Attorney General

3. EXECUTIVE SUMMARY

The full Crime Commission met on October 18, 1988 and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission. During the course of the study the subcommittee met on four occasions, heard significant public testimony from the law enforcement community, and was addressed by public officials on the status and use of the Literary Fund, and on current auditing procedures regarding money received from the federal government via the asset sharing program.

The information received by the subcommittee showed a great need for money to combat drug trafficking and that seized/forfeited assets are a great source for such money. Some of the law enforcement needs are currently met by the federal government's sharing of forfeiture proceeds with local law enforcement agencies.

Virginia does not have an equivalent program whereby forfeited proceeds are returned to law enforcement. Rather, pursuant to Virginia law, all forfeited proceeds other than conveyances are diverted to the Literary Fund. As a result, Virginia's statutes are little utilized. (This is reflected by the total of all types of forfeitures received by the Literary Fund in the most recent fiscal year (\$150,221).)

The subcommittee also learned of legislation pending at the time of this writing in the U. S. Senate (HR 5210, passed by the House of Representatives September 22, 1988) which could end the federal asset sharing program in Virginia, pointing up the urgency of a change in Virginia law.

Finally, the subcommittee recognized the need for a clear and unified drug forfeiture statute, superior to the fragmented statutory scheme now in place which incorporates Virginia Code §4-56 (conveyances subject to forfeiture for transport of illegal liquor). Upon finding that a great need exists for a return of forfeitures for law enforcement use and upon finding that the Literary Fund would suffer almost no loss whatsoever if such a return were made, and upon recognition of the need to clarify current law, the subcommittee made the following recommendations:

A. Amend the Virginia Constitution

Amend Article VIII, Section 8 of the Virginia Constitution to allow the return of drug forfeiture assets to the state treasury for the purpose of promoting law enforcement. This amendment would change the current constitutional provision requiring all forfeitures go to the Literary Fund.

B. Add Virginia Code Chapter 22.1 (§19.2-386.1 et seq.)

Proposed Chapter 22.1 is a comprehensive drug forfeiture statute which eliminates reference to the illegal liquor/forfeiture statute, clarifies procedures such as notice and filing procedures, revenue, etc. It establishes that forfeiture is a civil proceeding independent of any criminal action and explicitly sets a standard of proof (by a preponderance of the evidence) and establishes who must bear the burden of proof on which issues. Altogether, it is a clearer, drug-specific forfeiture statute which reflects policy implicit in current law.

C. Add Virginia Code §58.1-3127.1

Proposed Virginia Code §58.1-3127.1 is an essential restatement of existing §58.1-3127 but makes it clear that monies to be delivered to local law enforcement agencies by virtue of the federal forfeiture asset sharing program be audited and accounted for by the treasurer, as are other funds received by a city or county.

D. Amend Virginia Code Section 52-4.3

The proposed amendment to Virginia Code §52-4.3 (State Police Drug Investigation Special Account) makes it clear that the trust fund may receive monies from the federal government by virtue of the federal forfeiture asset sharing program.

4. STUDY DESIGN

The Subcommittee held three meetings and one public hearing; conducted surveys of appropriate people and literature, polled law enforcement agencies in and outside the state, and submitted a report of its findings and recommendations:

Meetings:

1st Subcommittee Meeting:	June 9, 1988
Public Hearing:	July 27, 1988
Second Subcommittee Meeting:	August 31, 1988
Final Subcommittee Meeting:	September 27, 1988

Reports:

Initial Staff Study:	June 9, 1988
Update for Subcommittee Review:	July 27, 1988
Second Update for Subcommittee Review:	August 31, 1988
Third Update for Subcommittee Review:	September 27, 1988
Subcommittee's Report to Full Commission:	October 18, 1988

5. SCOPE OF STUDY/OVERVIEW

A. Issue Identification

The first task of the Commission was to identify the actual issues at hand in more specific terms than described in House Joint Resolution No. 40, in order to establish, and limit, the parameters of the study. This was accomplished by an intensive literature search and contacts with law enforcement officials at the state local and federal level, including the United States Department of Justice Forfeiture Division.

The major issue, implicit in the study resolution, is whether Virginia should amend its constitution so as to direct assets forfeited as a result of drug arrests to the state treasury instead of to the Literary Fund. (Virginia's Constitution currently mandates that all fines and forfeitures be paid to the Literary Fund. Virginia Constitution Article VIII, Section 8. (See, Section 8.B. of this report.))

Inquiry was initiated by the subcommittee with the major question in mind, "What, if anything, needs improvement in Virginia's current forfeiture law?" The predominant response was that Virginia's forfeiture law was not being much utilized because local law enforcement officers, working in concert with federal agents and pursuant to federal forfeiture laws, could guarantee a return of a share of forfeited assets to the local law enforcement agency. (See, Survey Results, at page 13). Inasmuch as drug law enforcement is expensive, local law enforcement regards replenishment of the coffers as an opportunity not to be missed. The federal government provides for it; Virginia does not. The major problem identified, the following questions are presented:

1. What sum of money, represented by total forfeited asset value, is at issue?
2. How much money is the Literary Fund losing as a result of the federal asset sharing program?
3. How widespread is the utilization of federal asset sharing among Virginia's local governments?
4. To what degree is the Virginia forfeiture scheme being utilized?
5. Should Virginia's drug asset forfeiture procedure be streamlined to approximate that of the federal government?
6. Is there a workable statutory remedy to the problem without a constitutional amendment?
7. Would a constitutional amendment and a change in forfeiture statutes effect a desirable change in Virginia's drug enforcement program?
8. What controls are currently in force to guarantee audit and accounting of funds received by local governments by virtue of the federal asset sharing system?
9. What are the limits of control Virginia can place on the receipt of shared asset funds? (Assumes no constitutional amendment or continued use of federal asset sharing program pending amendment.)
10. How have other states utilized the federal asset sharing program in concert with their own forfeiture laws?
11. What are the features and limitations of the federal asset sharing program and by what authority does it operate?
12. What are the features and limitations of Virginia's drug asset forfeiture law and by what authority does it operate?

B. Research/Data Acquisition

Complete statutory authority for both Virginia and Federal drug asset seizure and forfeiture procedures was compiled. (Federal Statutes included herein at Appendix B.)

An informal telephone survey of law enforcement officers both in Virginia's populous and rural areas was conducted, which included Chiefs of Police, Sheriffs, Narcotics Officers, etc. A mail survey was also conducted. (See, Appendix C for a copy of the survey.)

Numerous local prosecutors were contacted. (See, Acknowledgements, at Page 17)

Input was also sought from the Virginia Attorney General's Office; the Virginia State Police; the Department of Criminal Justice Services; the U. S. Attorney's Office in the Eastern and Western Districts of Virginia; the U.S. Department of Justice, Forfeiture Division; the U. S. Marshall's Service in Richmond and National Headquarters, McLean, Virginia; the Drug Enforcement Administration, in Richmond and Washington, D. C.; the Federal Bureau of Investigation; and numerous other people and agencies in Virginia, other states, and the federal government (See, Acknowledgements, at Page 17.)

An extensive literature survey was conducted. (See, Bibliography, at Page 18.) Many of the documents researched are available for inspection at the Crime Commission staff office.

6. VIRGINIA LAW RE SEIZURE/FORFEITURE OF DRUG ASSETS

Virginia's drug asset forfeiture law is codified at Virginia Code §18.2-249 incorporating §4-56 (illegal alcoholic beverage forfeiture statute), mutatis mutandis.

Virginia's current law (amended effective July 1, 1988) provides for seizure of property, real and personal, used in substantial connection with illegal commerce in controlled substances. Virginia Code Ann. §18.2-249 (A) (1) (1988). However, real property may not be seized unless the violation carries a minimum five year sentence. Id. Virginia law also allows for seizure of everything of value, furnished or intended to be furnished in exchange for a controlled substance, and money and real or personal property traceable to such an exchange. Virginia Code Ann. §18.2-249 (A) (1) and (11) (1988).

With the exception of motor vehicles, boats, and aircraft, all property seized and forfeited (per §4-56) is forfeited to the Literary Fund. Vehicles, boats, and aircraft may be used by the seizing agency, after demonstration of need to the court, for a time period deemed appropriate by the court. Virginia Code Ann. §18.2-249 (C) (1988).

The procedure for forfeiture is set out in Virginia Code §18.2-249 (B) by reference to Virginia Code §4-56, subsections (C) through (J).

Generally, the procedure is as follows:

Once a seizure of forfeitable assets is made, the attorney for the Commonwealth must file an information against the property (an in rem, as opposed to in personam, proceeding) and all known owners, lienors and interested persons, to show cause why the property should not be forfeited (Virginia Code §4-56(d)). (If the attorney for the Commonwealth believes the owners or lienors to be innocent and ignorant of the illegal status of the property the Commonwealth may return the property. Virginia Code §4-56(d1).)

Otherwise, the owner or lienor (claimant) may obtain possession of the property upon payment of bond in amount equal to appraised value of the property. Virginia Code §4-56(e). Any claimant may be made, on his motion, a party defendant, at any time prior to final judgment. Virginia Code §4-56(f). After trial by judge or jury of five (if claimant demands jury trial) and a finding that the property was not subject to forfeiture (by its innocence or claimant's innocence) the property is relieved from forfeiture, no costs assessed. If the property is found to be forfeitable (e.g., in the possession of owner/claimant illegally per §18.2-249(A)) the property is sold and the proceeds of sale paid to the Literary Fund. Virginia Code §4-56(j).

The procedure described is civil, as opposed to criminal; the burden of proof is a preponderance of the evidence. No criminal conviction is necessary, as a matter of law, in order to effect forfeiture of illegally possessed property; however, as a practical matter, in many jurisdictions, the courts require a criminal conviction before entertaining the forfeiture proceeding, this according to many Commonwealth's attorneys.

Because Virginia's drug asset seizure and forfeiture procedure requires, in many cases, two trials, and because all forfeited assets, except conveyances, must be paid to the Literary Fund, Virginia's procedure is little used. By contrast, in almost all cases the federal procedure does not require a trial and up to 90% of forfeited assets are returned directly to the local law enforcement agency seizing the assets.

7. FEDERAL LAW RE SEIZURE/FORFEITURE OF DRUG ASSETS

A. Statutory Authority

Whereas Virginia's law allows the forfeiture of property via a civil, in rem (against the property itself) proceeding, the federal procedure allows for (1) a civil in rem proceeding, (2) a criminal, in personam (against the defendant's person) proceeding and, (3) administrative seizure wherein the government need neither file a complaint nor go to trial.

The federal forfeiture laws are codified at 18 U.S.C. §§1961-1968 (Racketeer Influenced and Corrupt Organizations Act, or RICO) and 21 U.S.C. §801 et seq. (Comprehensive Drug Abuse and Prevention and Control Act), included herein in Appendix B.

Even though the criminal forfeiture proceedings are available, the vast majority of cases are handled under 21 U.S.C. §881, the civil forfeiture procedure. Discussion here will be limited to that process.

21 U.S.C. §881(a) allows for the seizure and forfeiture of all property furnished or intended to be furnished in exchange for a controlled substance, and all property traceable to such an exchange, unless without the knowledge or consent of an owner.

Property valued at \$100,000 or less may be forfeited administratively if the Attorney General has probable cause to believe the property has been used or intended to be used in violation of the Drug Abuse Act (e.g., subject to forfeiture). 21 U.S.C. §881(b)(4).

In practice, when property is seized based on probable cause that it is subject to forfeiture, the owner is notified of the seizure and has the opportunity to file a claim for the property. The claimant has the burden of proving the property is not subject to forfeiture, the federal government having already met its burden (probable cause). 19 U.S.C. §1607 et seq. The effect, in over 90% of the cases, according to the U. S. Attorney's Office for the Eastern District of Virginia, is that the issue never goes to trial; the administrative forfeiture completes the legal process of divesting the owner of forfeitable property.

In the event the property is valued at over \$100,000, the United States must file a complaint against the property and has the burden of proving the property is subject to forfeiture. See, 19 U.S.C. §1607.

B. Attorney General's Guidelines

The U. S. Attorney General's Guidelines on Seized and Forfeited Property, published in the Federal Register, Vol. 52, December 10, 1987 (See, Appendix D.), establish the procedure by which local law enforcement may participate in, and share in the proceeds from, drug asset seizures and forfeitures initiated under federal law.

Pursuant to 21 U.S.C. §881(e)(1)(A), forfeited property may be transferred "to any Federal, State, or local agency. . ." And, pursuant to the Guidelines at (III)(D), a local and/or state law enforcement agency may petition for a transfer to itself a share of the assets forfeited, the share to be based on the agency's degree of participation in the investigation leading to the forfeiture.

The agency makes the request for funds on form DAG-71, a copy of which is included herein at Appendix E.

In all cases, the participating federal agency (the FBI, DEA or INS) retains at least 10% of the assets, more depending upon its degree of participation. Thus, in a case where a Virginia police agency did all of the investigative work, it would receive a 90% asset share, 10% retained by the federal agency whose office was contacted to adopt the seizure. In a case where a cooperative effort resulted in the seizure/forfeiture, as, for instance, among the D.E.A., the Virginia State Police, and the Henrico County Police Department and each shared the investigative effort equally, each would receive one-third of the assets.

The above two scenarios also describe the two predominant methods of "sharing." In the first (90%) case, a state agency conducts the investigation without assistance and requests the federal government adopt the seizure and use federal laws to effect the forfeiture. In the second case, a joint task force conducts the investigation and shares the proceeds, the forfeiture prosecuted federally.

Currently, the federal agencies accept seizures (adopted or task force) minimally valued at \$1,000 cash, \$2,500 vehicle, and \$5,000 boats and planes, although such values are subject to change at the discretion of each agency and agency field office, and increases in such minimums are anticipated.

8. COMPARISON OF VIRGINIA AND FEDERAL LAW

Virginia Law

Federal Law

TRIGGER

TRIGGER

Illegal manufacture, sale, distribution of controlled substance or marijuana. Mere possession insufficient.

Mere possession of controlled substance sufficient except no real property seized for simple marijuana possession.

SEIZABLE ASSETS

SEIZABLE ASSETS

Money, any and all personal property, real property used in substantial connection with illegal manufacture (except real property not seizable unless minimum penalty for crime is five years), sale, distribution, everything of value exchanged or for controlled substances or traceable to exchange.

All that Virginia seizes plus moneys used, or intended to be used to facilitate a violation of 21 U.S.C. §881, e.g., cash to buy a plane ticket to Miami for purchase of drugs; and conveyance used to facilitate transportation, sale, drugs, e.g., a vehicle used by dealer to drive to site of drug transaction even though no drugs found in vehicle.

PROCEDURE

PROCEDURE

Civil trial required; "innocent" claimant may demand a jury. Civil forfeiture trial typically follows criminal trial (and conviction) of owner, though not required by Code.

Criminal trial or civil trial or administrative procedure; civil lawsuit must be filed only if amount seized exceeds \$100,000 or if "proceeds" seized.

Burden of proof unspecified.

Burden of proof in administrative (no trial) forfeiture is probable cause to believe property is subject to civil forfeiture. Administrative procedure is used in more than 90% of cases.

No "relation-back" expressed in statute.

Property rights vest in the U.S. at time of act giving rise to forfeiture. Prevents transfer of assets to third parties.

No asset freezing.

U.S. may issue temporary restraining orders per 18 U.S.C. 848(d) (criminal forfeitures only).

Suit must be instituted within 60 days.

No time limit on institution of lawsuit. Civil forfeiture proceeding may be stayed pending completion of criminal proceeding.

Innocent owner may assert claim any time prior to final judgement.

Innocent owner must assert claim within 10 days. Innocent owner has high burden of proof.

Little caselaw; none under §18.2-249.

Ample caselaw

Replevin not expressly denied in statute.

Seized property not repleviable.

DISPOSITION OF ASSETS

100% of seized assets remain in Virginia.

DISPOSITION OF ASSETS

Virginia shares assets with Federal Government, per current policy.

All seized asset value except conveyances directed to Literary Fund.

Seized asset value is directed to law enforcement agency based on proportionate share of participation.

9. THE STATUS OF THE LITERARY FUND AS RELATED TO DRUG ASSET FORFEITURES

A. Introduction

The Literary Fund is a fund created by the Virginia Constitution to collect funds from several sources - one of those sources being fines and forfeited property proceeds. The fund is administered by the Board of Education and is used to fund and serve as collateral to secure loans for public school construction and other public school purposes, including the Teachers Retirement Fund.

The purpose of this section of the report is to summarize the current financial state of the fund and the relative role that forfeited property proceeds play in the fund's annual revenue base.

In summary, the fund (1) is not able to meet all the Board of Education expenditure needs, (2) currently receives approximately \$65 million in revenue per year of which approximately \$24.5 million comes from "Fines and Forfeitures" and, (3) approximately \$150,221 comes from all forfeitures at both district and circuit court levels. Thus, the forfeitures component of the total revenue is 0.2%, or, .2 of 1% of the total. The forfeitures component of the "Fines and Forfeitures" revenue component is 0.6%, or, .6 of 1% of the total.

B. The Constitutional and Statutory Base of the Fund

The Constitution of Virginia provides for the Literary Fund in Article XIII, Section 8, as follows:

THE LITERARY FUND - The General Assembly shall set apart as a permanent and perpetual school fund the present Literary Fund; the proceeds of all public lands donated by Congress for free public school purposes, of all escheated property, of all waste and unappropriated lands of all property accruing to the Commonwealth by forfeiture, of all fines collected by offenses committed against the Commonwealth, and of the annual interest on the Literary Fund, and such other sums as the General Assembly may appropriate. But so long as the principal of the fund totals as much as eighty million dollars, the General Assembly may set aside all or any part of additional moneys received into its principal for public school purposes, including the teachers retirement funds.

The Literary Fund shall be held and administered by the Board of Education in such manner as may be provided by law. The General Assembly may authorize the Board to borrow other funds against assets of the Literary Fund as collateral, such borrowing not to involve the full faith and credit of the Commonwealth.

The principal of the fund shall include assets of the fund in other funds or authorities which are repayable to the fund.

The Code of Virginia further provides in Chapter 10, §22.1-142 and §22.1-143 as follows:

HOW FUND CONSTITUTED; MANAGEMENT - There shall be set apart as a permanent and perpetual fund, to be known as the "Literary Fund", the present Literary Fund of the Commonwealth, donations to the Literary Fund, sums appropriated to the Literary Fund, all funds received by the State Treasurer and required to be deposited in the Literary Fund pursuant to Chapter 11.1 (Section 55.210. et seq.) of Title 55 of this Code and the proceeds of (i) all public land donated by Congress for public school purposes, (ii) all escheated property, (iii) all waste and unappropriated lands, (iv) all property accruing to the Commonwealth by forfeiture, (v) all fines collected for offenses committed against the Commonwealth, and (vi) the annual interest on the Literary Fund. The Literary Fund shall be invested and managed by the Board of Education as prescribed by Section 22.1-145.

MONEY BELONGING TO FUND RECEIVED IN TREASURY; ACCOUNTANT - All moneys belonging to the Literary Fund shall be paid into the State Treasury to the credit of the Literary Fund and shall be used for no other purpose whatsoever. The State Treasurer shall be the accountant of the fund.

C. The Current Status of the Literary Fund

The Literary Fund's resources are used to fund and serve as collateral for revolving low interest loans to public schools for construction and other State Board of Education approved public school expenditures. The funds are also used to fund the Teacher's Retirement Fund. In FY 1988-89, the projected amount to be transferred to teachers retirement is \$10 million. For FY 1989-90, that projected amount is \$15 million.

Revenue to the fund for 1986-87 was:	\$64,356,478
Projected revenue for 1987-88 is:	\$66,909,382

That revenue is broken into five revenue items, reported as follows for the current and past fiscal years:

<u>REVENUE ITEMS</u>	<u>1986-1987</u>	<u>1987-1988*</u>
Fines and Forfeitures	\$23,020,539	\$26,716,032
Unclaimed Property	13,500,000	9,600,000
Interest Earned	2,861,313	4,299,656
VPSA** Repayment	24,974,626	26,293,694
Misc. Revenue	0	0
	<hr/>	<hr/>
Total	\$64,356,478	\$66,909,382

* Projected

** Va. Public School Authority

In an effort to identify how much revenue was attributable to drug asset forfeitures, several court clerks were contacted who reported they did not distinguish the proceeds as such but, reported all types of forfeitures in the FINES AND FORFEITURES category. The Supreme Court Judicial Planning Office reported that for the fiscal year ending June, 1988, the total for all forfeitures by both district and circuit courts in the State of Virginia was \$150,221.

Using the 1987-88 projected revenue data for the Literary Fund, the 1987-88 revenue total for all the various types of forfeitures provided for under Virginia law constitutes .2 of 1% of the TOTAL REVENUE and .6 of 1% of the "FINES AND FORFEITURES" reported above.

D. Conclusion

The average monthly revenue to the Literary Fund for all forfeitures appears to be approximately \$12,518 and is approximately .2 of 1% of all revenue. It stands to reason that drug related forfeitures in the Commonwealth, under state law, is less than .2 of 1% of the total revenue to the Literary Fund.

10. THE SHARING OF DRUG-RELATED FORFEITURE PROCEEDS UNDER FEDERAL LAW

A. Introduction

Local law enforcement agencies in Virginia rarely utilize state law for forfeiting property in drug cases. This practice is described and the reasons for it are given in earlier sections, however, it produces widespread non-use of the state forfeiture procedures resulting in:

1. loss of revenue to the Literary Fund.
2. little interest by law enforcement and prosecution in vigorously pursuing forfeitures especially in cases where the amount of money involved is less than the federal minimum.
3. little incentive for law enforcement to aggressively investigate, prosecute and pursue forfeiture options at high costs to the local agency when the proceeds are then used for non-law enforcement purposes such as the Literary Fund.

Section 8 of this report establishes that little revenue is paid into the Literary Fund which logically suggests non-use of the state forfeiture mechanism in drug cases. This section details the nature and extent of cases processed by local agencies through the federal government agencies to allow some percentage of the proceeds to flow back to the state law enforcement agencies.

B. Assets Shared by Federal Agencies

The Drug Enforcement Agency (DEA), the Federal Bureau of Investigation (FBI), the Internal Revenue Service (IRS), the Immigration and Naturalization Service (INS), the U. S. Attorneys, Customs, and others have procedures for sharing money and property with local law enforcement agencies in a broad range of cases of mutual interest to federal and state governments

According to data furnished by the U. S. Marshals Service for agencies that participate in the National Asset Seizure and Forfeiture Program (NASAFP) for the period August, 1985, to March 1, 1988, local agencies and the Virginia State Police received funds from only the DEA and the FBI as follows

	<u>CASH</u>	<u>PROPERTY</u>	<u>TOTAL</u>
DEA	\$351,063	\$356,370	\$ 707,433
FBI	329,157	95,486	424,643
	<hr/>	<hr/>	<hr/>
TOTALS	\$680,220	\$451,856	\$1,132,076

For Virginia, this averages to \$36,518 per month for the 31 months of the period.

Virginia's neighboring states had the following totals and monthly averages for the same 31-month period:

<u>STATE</u>	<u>TOTAL</u>	<u>MONTHLY AVERAGE</u>
North Carolina	\$6,460,452	\$208,401
West Virginia	747,729	24,120
Maryland	1,007,069	32,486
Tennessee	1,188,964	38,353

Separate data reports were received from the DEA, the FBI, and the U S. Marshal's Service detailing individual claims in process or paid from Virginia's local law enforcement agencies and the Virginia State Police. Those data are provided in detail, by agency, in Appendix F. The data used date from August 1983, the beginning of the program known as The National Asset Seizure and Forfeiture Program (NASAFP).

The primary purpose of the detailed listing is to illustrate the law enforcement agencies that are active in working with the federal agencies and making claims and to illustrate the relative amounts of money and property involved. Communities with active drug enforcement units and an interest in encouraging forfeiture efforts involving the federal agencies are readily apparent.

C. Drug Arrests In Virginia - 1987

The Virginia Department of State Police in its "Crime in Virginia" report for the year 1987 reported 12,832 drug related arrests. Those arrests are detailed as follows:

Arrests for "SALE AND MANUFACTURING"	3,262
Opium, Cocaine & Derivatives	1,629
Marijuana	1,142
Synthetic Narcotics	281
Other Dangerous Non-Narc Drugs	210
Arrests for "Possession"	9,570
Opium, Cocaine & Derivatives	1,791
Marijuana	6,476
Synthetic Narcotics	553
Other Dangerous Non-narc Drugs	750
TOTAL.	12,832

(The Virginia data does not include federal drug arrests in Virginia.)

11. FINDINGS

A. Local Forfeiture Survey Indicates Local Law Enforcement Uses Federal Forfeiture Procedure Almost to Exclusion of State System

Police agencies in twenty-five localities in Virginia were polled by questionnaire and asked numerous questions about drug asset seizure practices. (A list of localities and a sample questionnaire are reproduced at Appendix C.) Seventeen of the twenty-five jurisdictions responded. Selected responses are summarized as follows:

- ° To what extent does your office use Virginia's seizure and forfeiture laws as part of its anti-drug effort?

 0 exclusively

11% (2) very often (in 2/3 or more of the drug cases with property involved)

 6% (1) often (between 1/3 and 2/3)

59% (10) occasionally (less than 1/3)

23% (4) not at all

- ° To what extent does your office use federal drug asset sharing (with DEA or FBI) as part of its anti-drug effort?

23% (4) exclusively

47% (8) very often (in 2/3 or more of the drug cases with property involved)

6% (1) often (between 1/3 and 2/3)

6% (1) occasionally (less than 1/3)

18% (3) not at all

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

0 very effectively

6% (1) effective

6% (1) somewhat effective

82% (14) very ineffective

6% (1) no response

- How would you rate the effectiveness of the provisions of the federal adoptive seizure and asset sharing program in terms of helping your office to pursue property and expedite forfeiture proceedings?

64% (11) very effective

11% (2) effective

6% (1) somewhat effective

6% (1) very ineffective

11% (2) no response

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

64% (11) very aggressive

11% (2) aggressive

11% (2) somewhat unaggressive

11% (2) very unaggressive

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

35% (6) very satisfied

29% (5) satisfied

18% (3) somewhat dissatisfied

11% (2) very dissatisfied

6% (1) no response

B. There Is No Formal Auditing Procedure of Federal Shared Assets

The Attorney General's Guidelines on Seized and Forfeited Property (See, Appendix D.) dictate that shared assets be returned to participating law enforcement agencies in proportion to degree of participation. The guidelines further dictate that the returned assets be used for law enforcement. The Department of Justice (including U. S. Marshal's Service, the Drug Enforcement Agency and the Federal Bureau of Investigation) exercises no formal audit or accounting of the funds. It merely verifies on form DAG-71 (Appendix E) that the recipient agent/agency is the appropriate fiscal officer/office and has the authority to receive the funds and that the funds will be used for law enforcement. Any additional exercise of control over shared assets disbursement is incidental and informal, according to D.E.A..

The Commonwealth of Virginia, likewise, exercises no fiscal control over shared assets, other than those disparate procedures employed by the individual localities to audit the funds.

C. The Literary Fund is Not Substantially Affected by Current Drug Asset Forfeiture Practice

The Literary Fund receives approximately \$2.1 million per month in fines and forfeitures per month. (See, Section 8 of this report). The yearly projected total of fines and forfeitures for July 1988 through June 1989 is \$26,500,000. By contrast, the total for forfeiture alone, exclusive of fines, in fiscal year ending in June, 1988 was \$150,221. That figure represents all forfeitures, not only those related to drug asset seizures.

D. Pending Federal Legislation (Title VI. of HR 5210, The Omnibus Drug Initiative Act of 1988) Could Significantly Change the Federal Asset Sharing Program

HR 5210 could dramatically change the current asset sharing practice. The bill contains measures to: (1) supplant the administrative seizure (no trial) procedure in instances of seizure of conveyances, with a procedure requiring a pre-trial (temporary restraining order) hearing before a federal magistrate and a complaint filed in Federal District Court and (2) divert all funds forfeited via civil process in 21 U.S.C §881 so as not to circumvent state law. The latter amendment could be interpreted to mean that local law enforcement agencies would be prohibited from receiving forfeited funds.

If the first amendment to the law is adopted, Virginia's participation in the asset sharing program would likely decrease since the U. S. Attorney's office's caseload would increase dramatically. Whereas, now, administrative procedure is almost exclusively used; under the amended law, cases involving conveyances would require some amount of court process.

If the second amendment to the law is adopted, Virginia's participation would likely be nil since the Attorney General's guidelines dictate that shared funds go to law enforcement agencies but the Virginia Constitution would prohibit the delivery to anything but the Literary Fund. Therefore, the federal government would be prohibited by the exclusive nature of the rules from delivery of any funds to Virginia.

12. RECOMMENDATIONS

Pursuant to HJR 40 (1988), the subcommittee studying drug asset seizures and forfeitures carefully considered the current status of asset seizures and forfeitures from both the state and federal perspective. At its final meeting on September 27, 1988 the subcommittee unanimously adopted the following recommendations for presentation to the full Commission on October 18, 1988.

A. Amendment of the Virginia Constitution

The subcommittee recommended amending Article VIII, Section 8 of the Virginia Constitution by adopting amended language appearing in SJR 36 (1988) and further amending that language. The recommended amending language is as follows:

The General Assembly may provide by general law an exception from this section for the proceeds from the sale of all property seized and forfeited to the Commonwealth for a violation of the criminal laws of this Commonwealth proscribing the manufacture, sale, or distribution of a controlled substance or marijuana. Such proceeds shall be paid into the state treasury and shall be distributed by law for the purpose of promoting law enforcement.

(The language in bold type reflects the subcommittee's additional amendment to the amendment in SJR 36. Full text of SJR 36 appears in Appendix A. Full text of the subcommittee's amendment appears in Appendix H.)

B. Amendment of the Virginia Code

1. Amendment to add new Chapter 22.1.

The subcommittee recommended amending the Virginia Code to add a Chapter 22.1, Section 19.2-386.1 et seq. The draft legislation encompasses and includes existing language appearing in §18.2-249, §4-56, and §18.2-369 et seq., which are the drug forfeiture statute, the illegal liquor/bootlegging statute, and the general forfeiture statute, respectively. The draft legislation also includes new language which explicitly sets out procedures and policy implicit in the language of existing law; it comprises a comprehensive drug forfeiture statute which is specific to and for drug asset seizures, the purpose of which is to clarify, simplify, and "clean up" existing law.

The major changes are as follows:

- (a) Addition of a three year statute of limitations - §19.2-386 1(c).
- (b) Extension to 90 days of period during which to file complaint, after seizure - §19.2-386.1(c).
- (c) Notice of seizure to owner - §19.2-386.3.
- (d) Procedure for handling of seized property pending final disposition - §19.2-386.4.
- (e) Exemptions for innocent owners clearly established - §19.2-386 8
- (f) Burden of proof (by a preponderance of the evidence) clearly established - §19.2-386.10.

2. Amendment to existing §18.2-249

The subcommittee recommended amendment of existing Virginia Code §18.2-249 to add language which makes it clear that among those things subject to seizure/forfeiture are, "any interest or profits derived from the investment of ... money or other property" traceable to an exchange of such money or other property for controlled substances. This would make explicit something deemed implicit in current law. (Full text of the proposed amended statute appears at Appendix H.)

3. Amendment to add new section 58.1-3127.1

The subcommittee recommended amending the Virginia Code to include a new section 58.1-3127.1 to accommodate the current practice of federal asset sharing. Existing law (specifically §58.1-3127) does not make it clear that forfeiture proceeds shared with local governments and received from the federal government are to be subject to the same accounting and audit procedures as all other funds. The new language would prohibit a local law enforcement agency from taking exclusive control of such monies without the attention of the local treasury, and board of supervisors or city council. (Text of proposed §58.1-3127.1 appears in Appendix H.)

4. Amendment to existing section 52-4.3

The subcommittee recommended amendment of existing Virginia Code §52-4.3 (State Police Drug Investigation Special Trust Account) to make it clear that appreciation to the account could legally include "payments to the fund from the federal government by virtue of grant, gift, forfeiture or other disposition." (Full text of the existing law and amendment appears in Appendix H.)

13. ACKNOWLEDGEMENTS

The members extend thanks to the following, for their cooperation, and valuable assistance to the study effort:

Office of the Attorney General of Virginia
Virginia State Police, Bureau of Criminal Investigations
Henrico County Police
City of Richmond Police
City of Hampton Police
Montgomery County Sheriff's Office
City of Lynchburg Police
Halifax County Sheriff's Department
Warren County Sheriff's Department
City of Virginia Beach Police
Arlington County Police
Fairfax County Police
Prince William County Police
City of Fairfax Police
Chesterfield County Police
City of Charlottesville Police
Blacksburg Police Department
City of Chesapeake Police Department
Henry County Sheriff's Department
City of Salem Police

Virginia Department of Criminal Justice Services
Richmond Area Regional Special Prosecutor's Office
Henrico County Commonwealth's Attorney's Office
Virginia Association of Commonwealth's Attorneys
Commonwealth's Attorney's Service and Training Council
York County Commonwealth's Attorney's Office
City of Salem Commonwealth's Attorney's Office
Virginia Senate Finance Committee Office
Virginia House Appropriations Committee Office

U. S. Marshal's Service, Richmond
U. S. Marshal's Service, Washington, D. C.
U. S. Attorney's Office, Eastern District of Virginia
U. S. Attorney's Office, Western District of Virginia
Department of Justice, Asset Forfeiture Office
National Institute of Justice
National Criminal Justice Association
Federal Bureau of Investigation
Drug Enforcement Administration, Richmond
Drug Enforcement Administration, Asset Forfeiture Office, Washington, D. C

Virginia Association of Chiefs of Police
Virginia Division of Legislative Services
West Virginia Legislative Services
Blue Ridge Association of Chiefs of Police
Virginia Secretary of Education
Virginia Auditor of Public Accounts
Virginia Supreme Court

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APPENDIX A

1988 SESSION
ENGROSSED

HP4101403

HOUSE JOINT RESOLUTION NO. 40

House Amendments in [] - February 16, 1988

Requesting the Crime Commission to study asset seizures and forfeitures.

Patrons—Allen, Callahan and Dillard; Senator Dalton

Referred to the Committee on Rules

WHEREAS, drug trafficking and abuse cause society extensive damage through the impairment or loss of life, treatment costs, and increased crime; and

WHEREAS, illegal drug use and related crime result in a national cost of \$59 billion annually and, as a result, drug abuse and crime are of primary public concern; and

WHEREAS, drug abuse has been shown as one of the best indicators of a criminal career and national research shows drug abuse accelerates criminal behavior; and

WHEREAS, growing evidence of drug-crime connections have prompted law-enforcement officials to seek new techniques and resources to attack drug trafficking; and

WHEREAS, forfeiture is a legal procedure that enables a government to seize property used in the commission of a crime, and, in some cases, assets traceable to criminal profits; and

WHEREAS, some states allow law-enforcement authorities to retail forfeited property and funds for official use to further combat drug dealers, and, despite the potential of such a strategy, its use remains limited; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission is requested to (i) evaluate the effectiveness of Virginia's asset seizure and forfeiture program in criminal cases, (ii) evaluate methods to improve said program, and (iii) make any recommendations the Commission finds appropriate.

The Commission shall employ whatever methods of inquiry it shall deem necessary, including, but not limited to, the conducting of public hearings throughout the Commonwealth and the employment of additional, temporary staff. The Department of Criminal Justice Services, through its Division of State and Local Services, shall lend its expertise and resources to the Commission in completing this study

The Commission shall complete its study and submit its recommendations, if any, no later than December 1, 1988.

[The direct costs of this study are estimated to be \$7,140, and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly]

Official Use By Clerks

Agreed to By
The House of Delegates

- without amendment
- with amendment
- substitute
- substitute w/amdt

Agreed to By The Senate

- without amendment
- with amendment
- substitute
- substitute w/amdt

Date: _____

Date: _____

Clerk of the House of Delegates

Clerk of the Senate

HOUSE JOINT RESOLUTION NO. 25

Offered January 19, 1988

Proposing an amendment to Section 8 of Article VIII of the Constitution of Virginia, relating to the Literary Fund.

Patrons—Allen, Parker, Wilson, Dickinson, Axelle, Putney, Dillard and Tata; Senator Marye

Referred to the Committee on Privileges and Elections

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia namely:

Amend Section 8 of Article VIII of the Constitution of Virginia as follows:

ARTICLE VIII
EDUCATION

Section 8. The Literary Fund.

The General Assembly shall set apart as a permanent and perpetual school fund the present Literary Fund; the proceeds of all public lands donated by Congress for free public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the Commonwealth by forfeiture except as hereinafter provided of all fines collected for offenses committed against the Commonwealth, and of the annual interest on the Literary Fund; and such other sums as the General Assembly may appropriate. But so long as the principal of the Fund totals as much as eighty million dollars, the General Assembly may set aside all or any part of additional moneys received into its principal for public school purposes, including the teachers retirement fund.

The General Assembly may provide by general law an exemption from this section for the proceeds from the sale of all property seized and forfeited to the Commonwealth for a violation of the criminal laws of this Commonwealth proscribing the manufacture, sale or distribution of a controlled substance or marijuana. Such proceeds shall be paid into the state treasury.

The Literary Fund shall be held and administered by the Board of Education in such manner as may be provided by law. The General Assembly may authorize the Board to borrow other funds against assets of the Literary Fund as collateral, such borrowing not to involve the full faith and credit of the Commonwealth.

The principal of the Fund shall include assets of the Fund in other funds or authorities which are repayable to the Fund.

Official Use By Clerks
Agreed to By The House of Delegates
without amendment []
with amendment []
substitute []
substitute w/amdt []
Agreed to By The Senate
without amendment []
with amendment []
substitute []
substitute w/amdt []
Date: _____ Date: _____
Clerk of the House of Delegates Clerk of the Senate

1988 SESSION
 ENGROSSED

HOUSE JOINT RESOLUTION NO. 112

House Amendments in [] - February 12, 1988

Proposing an amendment to Section 8 of Article VIII of the Constitution of Virginia, relating to the Literary Fund.

Patrons—Quillen, Hall, Marks, Parker, McDiarmid, Jackson, Dickinson, Cranwell, Thomas, Byrne, Diamonstein, Almand, Grayson, Allen, Council, Abbitt, Smith, Croshaw, Forehand, Heilig, Wilson, Finney, Hargrove, Cohen, Reynolds, Ackerman, Moore, Jones, J. C., Moss, Watkins, Dicks, Giesen, Guest, Tata, Crenshaw, Mayer, Agee, Brickley, Jennings, McGlothlin, Andrews, Christian, Kennedy, Green and Van Landingham; Senators: Goode and Buchanan

Referred to the Committee on Privileges and Elections

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia namely:

Amend Section 8 of Article VIII of the Constitution of Virginia as follows:

ARTICLE VIII
 EDUCATION

Section 8. The Literary Fund.

The General Assembly shall set apart as a permanent and perpetual school fund the present Literary Fund; the proceeds of all public lands donated by Congress for free public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the Commonwealth by forfeiture *except as hereinafter provided*, of all fines collected for offenses committed against the Commonwealth, and of the annual interest on the Literary Fund; and such other sums as the General Assembly may appropriate. But so long as the principal of the Fund totals as much as eighty million dollars, the General Assembly may set aside all or any part of additional moneys received into its principal for public school purposes, including the teachers retirement fund.

The General Assembly may provide by general law an exemption from this section for [the proceeds from the sale of all property seized and forfeited to the Commonwealth for a violation of the criminal laws of this Commonwealth proscribing the manufacture, sale or distribution of a controlled substance or marijuana all property and the proceeds of all property seized and forfeited to the Commonwealth for a violation of the criminal laws of this Commonwealth] Such proceeds shall be paid into the state treasury [and shall be distributed according to law]

The Literary Fund shall be held and administered by the Board of Education in such manner as may be provided by law. The General Assembly may authorize the Board to borrow other funds against assets of the Literary Fund as collateral, such borrowing not to involve the full faith and credit of the Commonwealth.

The principal of the Fund shall include assets of the Fund in other funds or authorities which are repayable to the Fund.

1988 SESSION

LD2288118

SENATE JOINT RESOLUTION NO. 36

Offered January 25, 1988

Proposing an amendment to Section 8 of Article VIII of the Constitution of Virginia, relating to the Literary Fund.

Patron—Gartlan

Referred to the Committee on Privileges and Elections

RESOLVED by the Senate of Virginia, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia namely:

Amend Section 8 of Article VIII of the Constitution of Virginia as follows:

ARTICLE VIII
EDUCATION

Section 8. The Literary Fund.

The General Assembly shall set apart as a permanent and perpetual school fund the present Literary Fund; the proceeds of all public lands donated by Congress for free public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the Commonwealth by forfeiture except as hereinafter provided, of all fines collected for offenses committed against the Commonwealth, and of the annual interest on the Literary Fund; and such other sums as the General Assembly may appropriate. But so long as the principal of the Fund totals as much as eighty million dollars, the General Assembly may set aside all or any part of additional moneys received into its principal for public school purposes, including the teachers retirement fund.

The General Assembly may provide by general law an exemption from this section for the proceeds from the sale of all property seized and forfeited to the Commonwealth for a violation of the criminal laws of this Commonwealth proscribing the manufacture, sale or distribution of a controlled substance or marijuana. Such proceeds shall be paid into the state treasury

The Literary Fund shall be held and administered by the Board of Education in such manner as may be provided by law The General Assembly may authorize the Board to borrow other funds against assets of the Literary Fund as collateral, such borrowing not to involve the full faith and credit of the Commonwealth.

The principal of the Fund shall include assets of the Fund in other funds or authorities which are repayable to the Fund.

Official Use By Clerks

Agreed to By The Senate

- without amendment []
with amendment []
substitute []
substitute w/amdt []

Date: _____

Clerk of the Senate

Agreed to By

The House of Delegates

- without amendment []
with amendment []
substitute []
substitute w/amdt []

Date: _____

Clerk of the House of Delegates

APPENDIX B

Evidence establishing that defendant entered into conversation with known drug dealer, providing dealer with the name of airplane pilot, was insufficient to sustain defendant's convictions for violation of 21 USCS §§ 841, 846, 952, and 963, where conversation between parties did not show that agreement existed between them to violate narcotics laws. *United States v Fernandez* (1986, CA11 Fla) 797 F2d 943.

Evidence showing that defendant, charged with violating 21 USCS §§ 812, 841, and 846 possessed weapons, was excludable given weight of its limited relevance against extreme prejudice such evidence would evoke, in minds of jury, until government

shows that weapons connection to the narcotic conspiracy and their connection to defendants who do not possess them. *United States v Chen* (1986, SD NY) 629 F Supp 263.

83. —Mere association

Evidence that defendant chauffeured individuals involved in conspiracy to possess marijuana and spent some time in motel room with those individuals merely establishes association with individuals and is insufficient to establish defendant's participation in conspiracy. *United States v Gomez* (1985, CA5 Tex) 776 F2d 542, reh den, en banc (CA5 Tex) 777 F2d 701.

§ 847. Additional penalties

RESEARCH GUIDE

Annotations:

When may offender found guilty of multiple crimes under Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS §§ 841-851) be punished for only one offense. 80 ALR Fed 794.

§ 848. Continuing criminal enterprise

(a) **Penalties; forfeitures.** Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 10 years and which may be up to life imprisonment, to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 413 of this title [21 USCS § 853]; except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18, United States Code, or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 413 of this title [21 USCS § 853].

(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

(2)(A) the violation referred to in subsection (d)(1) involved at least 300 times the quantity of a substance described in subsection 401(b)(1)(B) of this Act [21 USCS § 841(b)(1)(B)], or

(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received \$10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 401(b)(1)(B) of this Act [21 USCS § 841(b)(1)(B)].

(c) [Not enacted]

(d) "Continuing criminal enterprise" defined. For purposes of subsection (a), a person is engaged in a continuing criminal enterprise if—

(1) he violates any provision of this title or title III the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations of this title or title III—

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources.

(e) **Suspension of sentence and probation prohibited.** In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and section 4202 of title 18 of the United States Code and the Act of July 15, 1932 (D. C. Code, secs. 24-203-24-207), shall not apply.

(As amended Oct. 12, 1984, P. L. 98-473, Title II, Ch 111, Part B, § 305, 98 Stat. 2050; Oct. 27, 1986, P. L. 99-570, Title I, Subtitle F, §§ 1252, 1253, 100 Stat. 3207-15.)

Prevention and Control Act of 1970 (21 USCS §§ 841-851) be punished for only one offense. 80 ALR Fed 794.

INTERPRETIVE NOTES AND DECISIONS

- 3. Filing of prior conviction information** § 851(a)(1), trial court may nonetheless impose any other sentence within limits set forth in § 841(b)(1)(A). Gaertner v United States (1985, CA7 Wis) 763 F2d 787.
- Although trial court cannot enhance sentence under 18 USCS § 841(b)(1)(A) on basis of prior convictions where government fails to file record of prior convictions in accordance with 18 USCS

§ 853. Criminal forfeitures

(a) Property subject to criminal forfeiture. Any person convicted of a violation of this title or title III punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

- (1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;
- (2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and
- (3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 408 of this title (21 U.S.C. 848) [21 USCS § 848], the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this title or title III, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part [21 USCS §§ 841 et seq.], a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property". Property subject to criminal forfeiture under this section includes—

- (1) real property, including things growing on, affixed to, and found in land; and
- (2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) Third party transfers. All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) Rebuttable presumption. There is a rebuttable presumption at trial that any property of a person convicted of a felony under this title or title III is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

- (1) such property was acquired by such person during the period of the violation of this title, or title III or within a reasonable time after such period; and
- (2) there was no likely source for such property other than the violation of this title or title III.

(e) Protective orders. (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this title or title III for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

- (i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and
- (ii) the need to preserve the availability of the property through the entry of the

requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence [20, USCS Appx, Federal Rules of Evidence].

(f) **Warrant of seizure.** The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(g) **Execution.** Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(h) **Disposition of property.** Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(i) **Authority of the Attorney General.** With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this title, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 511(e) of this title (21 U.S.C. 881(e)) [21 USCS § 881(e)], of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(j) **Applicability of civil forfeiture provisions.** Except to the extent that they are inconsistent

with the provisions of this section, the provisions of section 511(d) of this title (21 U.S.C. 881(d)) [21 USCS § 881(d)] shall apply to a criminal forfeiture under this section.

(k) **Bar on intervention.** Except as provided in subsection (n), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(l) **Jurisdiction to enter orders.** The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(m) **Depositions.** In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure [USCS Federal Rules of Criminal Procedure, Rule 15].

(n) **Third party interests.** (1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonable without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(o) **Liberal construction.** The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(p) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

(Oct. 27, 1970, P. L. 91-513, Title II, Part D, § 413, as added Oct. 12, 1984, P. L. 98-473, Title II, Ch III, Part B, § 303 in part, 98 Stat. 2044; Oct. 12, 1984, P. L. 98-473, Title II, Ch XXIII, § 2301(d)-(f), 98 Stat. 2192; Oct. 27, 1986, P. L. 99-570, Title I, Subtitle D, § 1153(b), Subtitle Q, § 1864, 100 Stat. 3207-13, 3207-54.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This title" referred to in this section, is Title II of Act Oct. 27, 1970, P. L. 91-513, 84 Stat. 1242, which appears generally as 21 USCS §§ 801 et seq. For full classification of such Title, consult USCS Tables volumes.

"Title III", referred to in this section, is Title III of Act Oct. 27, 1970, P. L. 91-513, 84 Stat. 1285, which appears generally as 21 USCS §§ 951 et seq. For full classification of such Title, consult USCS Tables volumes.

Amendments:

1984. Act Oct. 12, 1984, in subsec. (a), in the concluding matter, inserted the sentence beginning "In lieu of a fine "; and deleted subsec. (d), which read:

"(d) If any of the property described in subsection (a)—

- "(1) cannot be located;
- "(2) has been transferred to, sold to, or deposited with a third party;
- "(3) has been placed beyond the jurisdiction of the court;
- "(4) has been substantially diminished in value by any act or omission of the defendant;
- or
- "(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5)."

Such Act further purported to redesignate subsecs. (e), (f), (g), (h), (i), (l), (m), (n), (o), and (p) as subsecs. (d), (e), (f), (g), (h), (i), (j), (h), (l), (m), (n), and (o), respectively, but such amendment as been executed by redesignated subsecs. (e)-(p) as subsecs. (d)-(o), respectively as the probable intent of Congress; and, in subsec. (n) as so redesignated, deleted "for at least seven successive court days" preceding "in such manner"

1986. Act Oct. 27, 1986, in subsec. (c), substituted " subsection (n)" for "subsection (o)" in subsec. (f), substituted "subsection (e)" for "subsection (f)" purported to amend the second setout of subsec. (h) by substituting "subsection (n)" for "subsection (o)" but such amendment was executed to subsec. (k) to conform to the probable intent of Congress [see the 1984 Amendments note to this section].

Such Act further purported to redesignate the second setout of subsec. (h) as subsec. (k), but such redesignation was not executed [see the 1984 Amendments note to this section].

Such Act further purported to redesignate subsec. (p) as subsec. (q); however, such amendment has been executed by adding subsec. (p).

INTERPRETIVE NOTES AND DECISIONS

Bona fide legal fees paid to indicted defendant's trial attorney are not subject to forfeiture under 18 USCS § 1963, 21 USCS § 853. *United States v Badalamenti* (1985, SD NY) 614 F Supp 194.

Retroactive application of forfeiture statute (21 USCS § 853) which does not change fact of forfeiture as punishment but merely establishes procedure by which forfeiture will be carried out does not violate ex post facto clause. *United States v Crozier* (1985, CA9 Ariz) 777 F2d 1376.

Provisions of Comprehensive Crime Control Act (21 USCS § 853) which allow entry, without hear-

ing, of restraining order against property which may be subject to forfeiture under federal drug laws and which allow hearing for party with third party interest in restrained property to have hearing only after property has been ordered forfeited, which only occurs after defendant is convicted, do not comply with due process requirements; in absence of valid procedural guidelines governing restraining order against property subject to forfeiture, Federal Rule Civil Procedure 65 governs, and hearing on order restraining property must be granted to parties asserting significant interest in

§§ 801 et seq.) and that pharmacy had not previously been inspected was sufficient to support issuance of warrant; fact that pharmacy had never before been inspected to insure compliance with compulsory recordkeeping requirements was circumstance that alone was sufficient to justify administrative warrant in light of deep public interest in enforcing compliance with recordkeeping requirements. *United States v Prendergast* (1978, CA3 Pa) 585 F2d 69.

Showing required for issuance of warrant for administrative inspection of drug store is not probable cause to believe crime has been committed, but since there is valid public interest in showing compliance with recordkeeping requirements of Comprehensive Drug Abuse Prevention and Control Act, mere lapse of considerable time since last inspection could be sufficient. *United States v Greenberg* (1971, WD Pa) 334 F Supp 364, 19 ALR Fed 731.

5. Scope of inspection

Valid inspection took place, rather than "search in disguise" even though it involved thorough scrutiny of physician's entire office-dwelling, where doctor refused to produce his

records in contravention of proper inspection warrant, indicating moreover that records were "all over the place." *United States v Montrom* (1972, ED Pa) 345 F Supp 1337, affd without op (CA3 Pa) 480 F2d 918 and affd without op (CA3 Pa) 480 F2d 919.

6. Warrantless inspections

Construing 21 USCS § 880(c)(5) in light of *United States v Biswell* (1972) 406 US 311, 32 L Ed 2d 87, 92 S Ct 1593, did not eliminate need for inspection warrant so as to authorize warrantless search of pharmacy; warrantless search of pharmacy was not conducted pursuant to lawful consent under 21 USCS § 880(c)(1) where agents told registered pharmacist to sign consent permitting inspection or face criminal penalties. *United States v Enserro* (1975, WD NY) 401 F Supp 160.

21 USCS § 880(c)(1) is based upon established principle that search conducted pursuant to valid consent is constitutionally permissible and exception to Fourth Amendment's warrant requirement. *United States v Pugh* (1976, WD Mich) 417 F Supp 1019.

§ 881. Forfeitures

(a) **Subject property.** The following shall be subject to forfeiture to the United States and no property right shall exist in them:

- (1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this title.
- (2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this title.
- (3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).
- (4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—
 - (A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this title or title III; and
 - (B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than

such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this title.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this title, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this title, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims. Any property subject to forfeiture to the United States under this title may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this title;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of this title.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly

(c) Custody of Attorney General. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this title, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it to an appropriate location for disposition in accordance with law

(d) **Other laws and proceedings applicable.** The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this title by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e) **Disposition of forfeited property.** Whenever property is forfeited under this title the Attorney General may—

- (1) retain the property for official use;
- (2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;
- (3) require that the General Services Administration take custody of the property and remove it for disposition in accordance with law; or
- (4) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

The proceeds from any sale under paragraph (2) and any moneys forfeited under this title shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in the general fund of the United States Treasury any amounts of such moneys and proceeds remaining after payment of such expenses.

(f) **Forfeiture of schedule I substances.** All controlled substances in schedule I that are possessed, transferred, sold, or offered for sale in violation of the provisions of this title shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

(g) **Plants.** (1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this title, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

(Oct. 27, 1970, P L. 91-513, Title II, Part E, § 511, 84 Stat. 1276; Nov 10, 1978, P L. 95-633, Title III, § 301(a), 92 Stat. 3777; Nov 30, 1979, P L. 96-132, § 14, 93 Stat. 1048.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

“This title”, referred to in this section, is Title II of Act Oct. 27, 1970, P L. 91-513, 84 Stat. 1242, which appears generally as 21 USCS §§ 801 et seq. For full classification of such Title, consult USCS Tables volumes.

“Title III”, referred to in this section, is Title III of Act Oct. 27, 1970, P L. 91-513, 84 Stat. 1285, which appears generally as 21 USCS §§ 951 et seq. For full classification of such Title, consult USCS Tables volumes.

“The Supplemental Rules for Certain Admiralty and Maritime Claims”, referred to in this section, is a reference to the Supplemental Rules for Certain Admiralty and Maritime Claims, which appear as USCS Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims.

“The customs laws”, referred to in this section, appear generally as 19 USCS §§ 1 et seq.

“Schedule I” and “schedules I and II”, referred to in this section, are contained in 21 USCS § 812(c).

Effective date of section:

Act Oct. 27, 1970, P L. 91-513, Title II, Part G, § 704(b), 84 Stat. 1284, which appears as 21 USCS § 801 note, provided that this section is effective upon enactment on Oct. 27, 1970.

Amendments:

1978. Act Nov. 10, 1978, added subsec. (a)(6); in subsec. (e)(2), deleted “, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs” following “public”, and added “The proceeds from any sale under paragraph (2) and any moneys forfeited under this title shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in the general fund of the United States Treasury any

§ 878. Powers of enforcement personnel

(a) Any officer or employee of the Drug Enforcement Administration or any State or local law enforcement officer designated by the Attorney General may—

(1)-(5) [Unchanged]

(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code.

(As amended Oct. 27, 1986, P. L. 99-570, Title I, Subtitle Q, § 1869, 100 Stat. 3207-55; Nov. 10, 1986, P. L. 99-646, § 86, 100 Stat. 3620.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES**Amendments:**

1986. Act Oct. 27, 1986 designated the introductory matter as subsec. (a), introductory matter, and in subsec. (a), introductory matter, as so designated, inserted "or (with respect to offenses under this title or title III) any State or local law enforcement officer"; and added subsec. (b).

Act Nov. 10, 1986, in the introductory matter, purported to designate the existing provisions as subsec. (a), however, such amendment was executed by Act Oct. 27, 1986, and in subsec. (a), purported to insert "or any State or local law enforcement officer" following "Drug Enforcement Administration"; however, this phrase was substituted for "or (with respect to offenses under this title or title III) any State or local law enforcement officer", which was inserted following "Drug Enforcement Administration" by Act Oct. 27, 1986. Such Act further purported to add subsec. (b), however, subsec. (b) was added by Act Oct. 27, 1986. See the Act Oct. 27, 1986 Amendments note for full clarification.

§ 880. Administrative inspections and warrants**RESEARCH GUIDE****Annotations:**

State and local administrative inspection of and administrative warrants to search pharmacies. 29 ALR4th 264.

§ 881. Forfeitures

(a) Subject property. [Introductory matter unchanged]

(1)-(6) [Unchanged]

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(8) All controlled substances which have been possessed in violation of this title.

(b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims. Any property subject to civil forfeiture to the United States under this title may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1)-(3) [Unchanged]

(4) the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this title.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

(c) Custody of Attorney General. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this title, the Attorney General may—

(1), (2) [Unchanged]

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) Other laws and proceedings applicable. The provisions of law relating to the seizure,

summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this title by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e)(1) Disposition of forfeited property. Whenever property is civilly or criminally forfeited under this title the Attorney General may—

(A) retain the property for official use or transfer the custody or ownership of any forfeited property to any Federal, State, or local agency pursuant to section 616 of the Tariff Act of 1930 (19 U.S.C. 1616) [19 USCS § 1616];

(B) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(C) require that the General Services Administration take custody of the property and dispose of it in accordance with law; or

(D) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay—

(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

(ii) awards of up to \$100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent. Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, United States Code, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A).

(f) Forfeiture of schedule I or II substances. (1) All controlled substances in schedule I or II that are possessed, transferred, sold, or offered for sale in violation of the provisions of this title shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I or II, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this title under such circumstances as the Attorney General may deem necessary.

(g) [Unchanged]

(h) Property title, etc. vested in United States. All right, title, and interest in property described in subsection (a) shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(i) Stay of civil proceeding. The filing of an indictment or information alleging a violation of this title or title III, or a violation of State or local law that could have been charged under this title or title III, which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(j) Venue. In addition to the venue provided for in section 1395 of title 28, United States Code [28 USCS § 1395], or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(As amended Oct. 12, 1984, P. L. 98-473, Title II, Ch III, Part B, § 306 Part C, § 309, Ch V, § 518, 98 Stat. 2050, 2051, 2075; Oct. 27, 1986, P. L. 99-570, Title I, Subtitle A, § 1006(c), Subtitle Q, § 1865, Subtitle U, § 1992, 100 Stat. 3207-7, 3207-54, 3207-59; Nov. 10, 1986, P. L. 99-646, § 74, 100 Stat. 3618.)

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter [18 USCS § 1962] shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962 [18 USCS § 1962];

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962 [18 USCS § 1962]; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962 [18 USCS § 1962].

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (1) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter [18 USCS § 1962] and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested

concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence [28 USCS Appx].

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b) [31 USCS § 3302(b)], the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

- (1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter [18 USCS §§ 1961 et seq.], or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter [18 USCS §§ 1961 et seq.];
- (2) compromise claims arising under this section;
- (3) award compensation to persons providing information resulting in a forfeiture under this section;
- (4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and
- (5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—

- (1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;
- (2) granting petitions for remission or mitigation of forfeiture;
- (3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;
- (4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;
- (5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and
- (6) the compromise of claims arising under this chapter [18 USCS §§ 1961 et seq.]. Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section,

insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter [18 USCS §§ 1961 et seq.] by the Attorney General.

(i) Except as provided in subsection (l), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure [USCS Rules of Criminal Procedure, Rule 15].

(l) (1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) [Redesignated]

(n) If any of the property described in subsection (a), as a result of any act of omission of the defendant—

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

(As amended Oct. 12, 1984, P L. 98-473, Title II, Ch III, Part A, § 302, Ch XXIII, § 2301(a)-(c), 98 Stat. 2040, 2192; Oct. 27, 1986, P L. 99-570, Title I, Subtitle D, § 1153(a), 100 Stat. 3207-13; Nov. 10, 1986, P L. 99-646, § 23, 100 Stat. 3597.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1984. Act Oct. 12, 1984 substituted this section for one which read:

“(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

“(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

“(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.”

Such Act further, in subsec. (a), as so amended, in the concluding matter, inserted “In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.”; deleted subsec. (d), as so amended, which read:

“(d) If any of the property described in subsection (a)—

- “(1) cannot be located;
 - “(2) has been transferred to, sold to, or deposited with, a third party;
 - “(3) has been placed beyond the jurisdiction of the court;
 - “(4) has been substantially diminished in value by any act or omission of the defendant;
- or
- “(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).”

Such Act further, in subsec. (m)(1), as so amended, deleted “for at least seven successive court days” following “dispose of the property”

1986. Act Oct. 27, 1986 added subsec. (n).

Act Nov. 10, 1986, in subsec. (c), substituted “(l)” for “(m)” redesignated subsecs. (e)-(m) as subsecs. (d)-(l) respectively; and in subsec. (i), as so redesignated, substituted “(l)” for “(m)”

RESEARCH GUIDE

Federal Procedure L Ed:

5 Fed Proc, L Ed §§ 10:10, 10:18.

9 Fed Proc, L Ed §§ 22:172, 22:486.

in initiating judicial forfeiture proceedings violates due process involves weighing of length of delay, reason for delay, claimant's assertion of his right, and prejudice to claimant; mere fact that delay in initiating judicial forfeiture proceedings was approximately 9 months does not warrant summary judgment against government on grounds of delay

where trial court fails to evaluate delay in light of stated factors; requirement of prompt referral requires referral no later than time judicial proceedings must be instituted to comply with constitutional due process. *United States v Two Hundred Ninety-Five Ivory Carvings* (1984, CA9 Wash) 726 F2d 529.

§ 1604. Seizure; prosecution

RESEARCH GUIDE

Federal Procedure L Ed:
32 Fed Proc, L Ed § 76:849.

INTERPRETIVE NOTES AND DECISIONS

2. Timeliness of institution of proceedings

Six months delay in giving notice of forfeiture and 13 months delay in bringing forfeiture complaint in Federal District Court is not prompt commencement of forfeiture proceedings where for first 6 months of period nothing was done by government; government must explain and justify substantial delays in seeking forfeiture of seized property. *United States v \$23,407.69 in U.S. Cur-*

rency (1983, CA5 Tex) 715 F2d 162.

Statute of limitations governing commencement of actions under 19 USCS § 1552 is 19 USCS § 1621 which reports government 5 years from discovery or commission of violation; delay is not defense unless there is clear pattern of delay or contumacious conduct by government. *United States v Joan & David Helpern Co.* (1985, CIT) 611 F Supp 985.

§ 1605. Seizure; custody; storage

All vessels, vehicles, aircraft, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the appropriate customs officer for the district in which the seizure was made to await disposition according to law.

[Concluding para. unchanged]

(As amended Oct. 12, 1984, P L. 98-473, Title II, Ch III, Part D, § 321 in part, 98 Stat. 2056; Oct. 30, 1984, P L. 98-573, Title II, Subtitle A, § 213(a)(2), 98 Stat. 2984.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1984. Act Oct. 12, 1984, in the introductory para., inserted "aircraft," following "vehicles."

Act Oct. 30, 1984 (effective 10/15/84, as provided by § 214(e) of such Act, which appears as 19 USCS § 1304 note), in the introductory para., purported to insert "aircraft," following "vehicles."; however, such amendment could not be executed because Act Oct. 12, 1984 had already made the identical amendment.

§ 1606. Seizure; appraisement

The appropriate customs officer shall determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws.

(As amended Oct. 12, 1984, P L. 98-473, Title II, Ch III, Part D, § 321 in part, 98 Stat. 2056; Oct. 30, 1984, P L. 98-573, Title II, Subtitle A, § 213(a)(3), 98 Stat. 2984.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1984. Act Oct. 12, 1984 purported to insert "aircraft," following "vehicle", but such amendment could not be executed because the word "vehicle" only appears in the section followed by a comma.

Act Oct. 30, 1984 (effective 10/15/84, as provided by § 214(e) of such Act, which appears as 19 USCS § 1304 note) inserted "aircraft," following "vehicle,"

§ 1607. Seizure; value \$100,000 or less, prohibited merchandise, transporting conveyances

(a) If—

"(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed \$100,000;

(2) such seized merchandise is merchandise the importation of which is prohibited; or

(3) such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance;

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published

for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

(b) As used in this section, the term "controlled substance" has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802) [21 USCS § 802].

(As amended Oct. 12, 1984, P L. 98-473, Title II, Ch III, Part D, §§ 311, 321 in part, 98 Stat. 2053, 2056; Oct. 30, 1984, P L. 98-573, Title II, Subtitle A, § 213(a)(4), 98 Stat. 2984.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1984. Act Oct. 12, 1984 substituted this section for one which read: "If such value of such vessel, vehicle, merchandise, or baggage, does not exceed \$10,000, the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 610 and 612 of this Act merchandise the importation of which is prohibited shall be held not to exceed \$10,000 in value."

Act Oct. 30, 1984 (effective 10/15/84, as provided by § 214(e) of such Act, which appears as 19 USCS § 1304 note) substituted this section for one which read:

"(a) If—

"(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed \$100,000;

"(2) such seized merchandise consists of articles the importation of which is prohibited;

or

"(3) such seized vessel, vehicle, or aircraft was used to import, export, or otherwise transport or store any controlled substances;

the appropriate customs officers shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

"(b) As used in this section, the term 'controlled substance' has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802)."

§ 1608. Seizure; claims; judicial condemnation

Any person claiming such vessel, vehicle, aircraft, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of \$5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than \$250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

(As amended Oct. 12, 1984, P L. 98-473, Title II, Ch III, Part D, §§ 312, 321 in part, 98 Stat. 2054, 2056; Oct. 30, 1984, P L. 98-573, Title II, Subtitle A, § 213(a)(5), 98 Stat. 2985; Oct. 27, 1986, P L. 99-570, Title I, Subtitle Q, § 1862, 100 Stat. 3207-54.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Act Oct. 12, 1984 amended this section by inserting "\$5,000 or 10 per centum of the value of the claimed property, whichever is lower, but not less than," and Act Oct. 30, 1984, without referring to the other amendment, inserted "\$2,500 or 10 percent of the value of the claimed property, which is lower, but not less than" The amendment by Act Oct. 30, 1984 has been executed as the probable intent of Congress.

Amendments:

1984. Act Oct. 12, 1984 purported to insert "aircraft," following "vehicle", but such amendment could not be executed because the word "vehicle" only appears in the section followed by a comma, and inserted \$5,000 or 10 per centum of the value of the claimed property, whichever is lower, but not less than,"

Act Oct. 30, 1984 (effective 10/15/84, as provided by § 214(e) of such Act, which appears as 19 USCS § 1304 note) inserted "aircraft," following "vehicle," and inserted "\$2,500 or 10 percent of the value of the claimed property, whichever is lower, but not less than" [see the Explanatory note to this section].

1986. Act Oct. 27, 1986, substituted "\$5,000" for "\$2,500", and purported to repeal such section [see the Explanatory note to this section].

Act Oct. 27, 1986, § 1862(b) purported to repeal this section, but such repeal was not executed as the probable intent of Congress.

APPENDIX C

FORFEITURE SURVEY

NAME:

TITLE:

OFFICE/DIVISION:

ADDRESS:

TELEPHONE NUMBER:

DATE:

1. How would you characterize the primary focus of your office's prosecution of drug offenses? (CHECK ONLY ONE)

_____ cultivation

_____ manufacturing

_____ smuggling/trafficking

_____ organized crime involvement

_____ street level distribution

_____ other (SPECIFY): _____

2. To what extent does your office use Virginia's seizure and forfeiture laws as part of its anti-drug effort?

_____ exclusively

_____ very often (in 2/3 or more of the drug cases with property involved)

_____ often (between 1/3 and 2/3)

_____ occasionally (less than 1/3)

_____ not at all

3. To what extent does your office use federal drug asset sharing (with DEA or FBI) as part of its anti-drug effort?

_____ exclusively

_____ very often (in 2/3 or more of the drug cases with property involved)

_____ often (between 1/3 and 2/3)

_____ occasionally (less than 1/3)

_____ not at all

4. If you use either the federal asset sharing program or Virginia's laws as the primary method to accomplish asset forfeiture please explain why.

5. Please indicate 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).

\$_____ 1987

\$_____ 1986

\$_____ 1985

\$_____ 1984

6. For 1988 (thus far) and for 1987 (entire year), please indicate the actual net value, after satisfaction of liens and 3rd party creditors, of assets seized in the following categories:

<u>1988</u>	<u>1987</u>
\$_____ Cash	\$_____ Cash
\$_____ Vehicles	\$_____ Vehicles
\$_____ Real Property	\$_____ Real Property
\$_____ Boats	\$_____ Boats
\$_____ Aircraft	\$_____ Aircraft
\$_____ Negotiable Instruments	\$_____ Negotiable Instruments
\$_____ Other (Specify)	\$_____ Other (Specify)
\$_____ Other (Specify)	\$_____ Other (Specify)

7. 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.)

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

_____very effective WHY?
_____effective
_____somewhat effective
_____very ineffective

9. How would you rate the effectiveness of the provisions of the federal adoptive seizure and asset sharing program in terms of helping your office to pursue property and expedite forfeiture proceedings?

_____very effective WHY?
_____effective
_____somewhat effective
_____very ineffective

10. 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

11. 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

12. 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

13. If you feel that Virginia'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.

14. As mentioned in the cover letter, the Virginia State Crime Commission intends to develop a report on uses of forfeiture laws in drug cases. Please indicate whether the report may identify your office with respect to your responses to this questionnaire.

_____Yes, my office may be identified in the report.

_____No, my office may not be identified in the report.

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

Robie Ingram
Staff Attorney
Virginia State Crime Commission
Post Office Box 3-AG
Richmond, Virginia 23208

SURVEY RECIPIENTS

Donald E. Carey
Chief of Police
Blacksburg, Virginia

M. David Hooper
Chief of Police
Roanoke, Virginia

Frank Duling
Chief of Police
Richmond, Virginia

Gary Leonard
Chief of Police
Alexandria, Virginia

R. A. Lakoski
Chief of Police
Chesapeake, Virginia

John Dekoven Bowen
Chief of Police
Charlottesville, Virginia

Loyd W. Smith
Chief of Police
Fairfax, Virginia

Patrick G. Minetti
Chief of Police
Hampton, Virginia

Joseph M. Seiffert
Chief of Police
Lynchburg, Virginia

Jay A. Carey, Jr.
Chief of Police
Newport News, Virginia

Henry Henson
Chief of Police
Norfolk, Virginia

Harry Haskins
Chief of Police
Salem, Virginia

Charles R. Wall
Chief of Police
Virginia Beach, Virginia

Frank Johnstone
Chief of Police
Albemarle Ccounty
Charlottesville, Virginia

William K. Stover
Chief of Police
Arlington, Virginia

Col. Joseph E. Pittman, Jr.
Chief of Police
Chesterfield, Virginia

John E. Granfield
Chief of Police
Fairfax, Virginia

Sheriff Woody K. Bane
Halifax, Virginia

Sheriff James Rogers
Collinsville, Virginia

George T. Owens
Chief of Police
Prince William, Virginia

Sheriff Lynn C. Armentrout
Front Royal, Virginia

Sheriff Harold Bradley
Hanover, Virginia

Col. R. G. Engels
Chief of Police
County of Henrico
Richmond, Virginia

Joseph Koziol
Chief of Police
Portsmouth, Virginia

Sheriff Louis E. Barber
Christiansburg, Virginia

APPENDIX D

THE U.S. ATTORNEY GENERAL'S GUIDELINES ON SEIZED AND FORFEITED PROPERTY

Federal Register (Vol. 52, Dec. 10, 1987)

The Attorney General recently issued Guidelines on Seized and Forfeited Property. The Department of Justice is publishing the text of the *Guidelines* for the information and convenience of the public. The following is the text of the *Guidelines*.

Attorney General's Guidelines on Seized and Forfeited Property

I. Statement of Policy

The following guidelines are designed to implement certain asset forfeiture provisions of the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986 pertaining to the disposition of forfeited property, the management and use of the Department of Justice Assets Forfeiture Fund, and the discontinuance of federal forfeiture actions to permit forfeiture by state or local procedures.

Title 21, United States Code (U.S.C.), section 881(e), authorizes the Attorney General to dispose of criminally or civilly forfeited property by (1) retaining the property for official use; (2) transferring custody or ownership of the property to any federal, state, or local agency pursuant to the Tariff Act of 1930, Title 19, U.S.C., section 1616; or (3) placing the forfeited cash or proceeds of sale of forfeited property in an appropriation called the Department of Justice Assets Forfeiture Fund (hereinafter "the Fund"). Subsection (c) of 19 U.S.C. 1616 authorizes the Attorney General to transfer forfeited property to any other Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property.

This authority is consistent with the Department of Justice's purpose of promoting cooperative law enforcement efforts in drug trafficking and other investigations. The Department intends to manage its asset forfeiture program in a manner designed to enhance this Federal, State, and local cooperation. Although section 1992 of the Anti-Drug Abuse Act of 1986, Pub. L. 99-750 (October 27, 1986) amended 21 U.S.C. 881(e) by deleting the familiar equitable sharing language directing the Attorney General to ensure equitable transfer of forfeited property to the appropriate state or local law enforcement agency so as to reflect generally the

contribution of any such agency participating directly in any of the acts which led to seizure or forfeiture of such property, this remains the policy of the Department of Justice.

The Law Enforcement Coordinating Committees will assist in informing Federal, State, and local law enforcement agencies about the procedures for requesting an equitable transfer of forfeited property, help facilitate the application for transfer of such property, and promote the implementation of the forfeiture provisions of the Comprehensive Crime Control Act of 1984 and the Anti-Drug

Abuse Act of 1986 in each Federal district.

II. Definitions and Other General Provisions

A. "Department investigative bureau" refers not only to an investigative unit within the Department of Justice but to any other federal agency investigative unit which by law deposits the proceeds of forfeited assets into the Department of Justice Assets Forfeiture Fund.

B. "Head of the Department investigative bureau" means the head of that bureau or his headquarters-level designee.

C. "Placing property into official use" means use of forfeited property by a Department bureau for any official purpose.

D. "Property" means tangible property and cash.

E. "Cash" means currency, negotiable instruments, and securities.

F. "State and local agencies" means state and local law enforcement agencies.

G. "Appraised value" means fair market value.

H. "Drug law enforcement function" means any official activity by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service which materially facilitates enforcement of the drug laws of the United States.

I. "Whenever the term "Deputy Attorney General" is used in these Guidelines, the power or responsibility referred to may be exercised by a duly authorized Acting Deputy Attorney General.

J. Whenever the term "Associate

Attorney General" is used in these guidelines, the power or responsibility referred to may be exercised by the Deputy Attorney General or by a duly authorized Acting Deputy or Acting Associate Attorney General.

K. Whenever the term "Assistant Attorney General, Criminal Division" is used in these guidelines, the power or responsibility referred to may be exercised by the Deputy Attorney General, the Associate Attorney General, a duly authorized Acting Assistant Attorney General of the Criminal Division, or by any Deputy Assistant Attorney General of the Criminal Division.

L. Whenever any reference is made in these Guidelines to "Criminal Division Section Chief" or the "Director, Asset Forfeiture Office, such reference shall also be deemed to include the Assistant Attorney General of the Criminal Division, any Deputy Assistant Attorney General in the Criminal Division, and any duly authorized Acting Section Chief or Acting Director.

M. Whenever a statute, regulation, or official form cited in these Guidelines is replaced by a substantially identical statute, regulation, or official form designated by a new number, the citation will be deemed to refer to that new statute, regulation, or official form.

III. Use and Transfer of Forfeited Property

A. Retention of Property for Official Use

1. The Attorney General has the authority to retain any civilly or criminally forfeited tangible property for official use by any Department investigative bureau.

2. No forfeited cash, nor any proceeds from sales of forfeited property, may be transferred to, or retained by, any Federal agency under the provisions of 21 U.S.C. 881(e) governing disposition of forfeited property.

3. Payment of liens and mortgages pursuant to an authorization to place property into official use.

a. Liens and mortgages cumulatively amounting to less than one third of the appraised value of the asset and totaling less than \$50,000 will be paid from the Fund at the direction of the head of the Department investigative bureau.

b. Payments of liens or mortgages that, in the aggregate, total \$50,000 or greater or exceed one third of the appraised value of the asset, will be paid from the Fund at the request of the Department investigative bureau subject to the concurrence of the Associate Attorney General.

B. Official Use by Department Investigative Bureau

1. The Attorney General's authority to place tangible property into official use is delegated to the head of the Department investigative bureau responsible for the processing of the forfeiture.

a. Each agency shall develop guidelines for determining the circumstances under which property is to be placed into official use. In no event is property to be placed into official use unless it is to be used for a significant law enforcement purpose as defined by agency guidelines. Such guidelines are to be reviewed and approved by the Associate Attorney General.

b. In making a decision concerning placing forfeited property into official use, the head of the Department investigative bureau must consider the financial status of the Department of Justice Assets Forfeiture Fund and the dollar value of the asset if sold.

c. Exercise of this delegation of authority is subject to concurrence by the Associate Attorney General for all property appraised at \$750,000 to \$2,000,000 and by the Deputy Attorney General for all property appraised at \$2,000,000 or more. For all property appraised at \$20,000 or more a special justification is to be prepared detailing the reasons why the property was placed into official use rather than having been sold. Such a justification is to be retained by the agency for a period of five years.

C. Official Use by Other Department Bureaus

1. If the Department investigative bureau does not choose to place the forfeited property into official use, and, if the property has not been equitably transferred, the Director, United States Marshals Service, will determine appropriate disposal, including ascertaining whether any remaining property is suitable for official use by other Department bureaus.

a. A decision to place such property into official use is subject to concurrence by the Associate Attorney General for all property appraised at \$750,000 to \$2,000,000 or by the Deputy Attorney General for all property appraised at \$2,000,000 or more.

2. After the Department investigative bureau declines to place the forfeited property into official use, and if the property is not equitably transferred, and if more than one Department component wants to retain for official use the same forfeited property, the

Associate Attorney General will determine which component may place such property into official use.

D. Transfer of Property to Federal, State, or Local Law Enforcement Agencies

1. Attorney General's Authority for Equitable Transfer of Forfeited Property

a. Title 21, U.S.C. 881(e), and Title 19, U.S.C. 1816, as made applicable by 21 U.S.C. 881(d) and other statutes, authorize the Attorney General to transfer forfeited property to any federal agency or to any State or local law enforcement agency that directly participated in the acts which led to the seizure or forfeiture.

b. Property not retained for official use by the Department investigative bureau responsible for the processing of the forfeiture is eligible for equitable transfer.

c. Where a participating law enforcement agency petitions for a transfer of some or all of the forfeited property, the Attorney General shall determine an equitable share that generally reflects the relative contribution of the participating agencies to the investigation leading to its seizure and forfeiture.

2. Procedure for Determining Equitable Transfer

a. Any Federal, State, or local law enforcement agency that participates in the acts leading to a seizure or forfeiture may file a request for an equitable transfer of the property.

b. The criteria for determining the equitable transfer of the property will be the same for all requests.

c. In all cases the final decision-making authority rests with the Attorney General or his designee.

3. Requests from Participating Law Enforcement Agencies

a. Within thirty days following the seizure for forfeiture, a federal, state, or local agency should submit a written request for an equitable transfer of the property subject to forfeiture in order to be assured of consideration, but in any event no later than the date of forfeiture or the disposition of the property, whichever is later.

b. This request must be filed with the local or regional office of the Department investigative bureau responsible for processing the forfeiture.

c. The request must include the following information:

(1) Identification of the property against which the claim is made;

(2) Details regarding the requesting agency's participation, including the amount of money and manpower expended by the Federal, State, or local agency in pursuing the case;

(3) A statement of the intended law enforcement use for the property;

(4) A designation of the proper fiscal entity to which disbursements can be made (which disbursements will not be made in currency);

(5) A designation of the proper official to whom transfer documents should be delivered by the United States;

(6) A designation of the proper party to whom possession should be delivered;

(7) A statement by an appropriate legal officer indicating that the transfer is not prohibited under the applicable Federal, State, or local law.

(8) In instances of a joint application by several federal, state, or local agencies, the relative share of each Federal, State, or local agency;

(9) A statement that all fees and expenses necessary to effect transfer of title will be paid by or on behalf of the requesting agency not later than the time of transfer; and

(10) An assurance that, if requested to do so, a report will be provided as to the actual use of any transferred property or proceeds.

d. The requesting agency must certify that the information contained in 3(c)(2-7) above is true and correct.¹

e. Property will be transferred to state or local agencies only in cases where the tangible property or cash will be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, resulting in an increase of law enforcement resources for that specific State or local agency.

f. An information copy of any request will be forwarded by the Department investigative bureau to the United States Attorney in the district where the transfer request originated.

4. Procedure for Processing Requests for Equitable Transfer

a. In all cases, the Department investigative bureau field unit receiving the request will prepare a written report that will evaluate the degree of assistance provided by the requesting agency or agencies in the underlying investigation. Such a report shall be prepared and forwarded to the Department investigative bureau headquarters within ten days of receiving the request absent unusual circumstances. Within five days of receipt the Department investigative

bureau headquarters will forward a copy of the request to the Director of the United States Marshals Service.

b. In determining the equitable share for a participating Federal, State, or local agency, the governing factor to be considered is the time and effort contributed by each such agency participating directly in the investigation or other law enforcement activity which led directly or indirectly to the seizure or forfeiture of the property. If the Federal investigative effort is ten percent or less, the determining official will allocate ten percent to the Federal government to compensate for its administrative role and divide the participating agency shares from the remaining ninety percent. If the Department's investigative effort is more than ten percent, the sharing percentages will be based strictly on the contribution by the agency or agencies. This "ten percent rule" will not alter the ability of the United States Marshals Service to recover costs directly from participating agencies or affect their ability to pay appropriate costs from the Assets Forfeiture Fund. For purposes of practicality, the "ten percent rule" does not apply to the transfer of forfeited assets that are not readily divisible, such as a single conveyance.

c. The allocation based on time and effort may be adjusted based upon the following additional, but secondary, factors:

(1) Whether the agency originated the information that led to the ultimate seizure, and whether the agency obtained such information by use of its investigative assets, rather than fortuitously;

(2) Whether the agency provided unique or indispensable assistance;

(3) Whether the agency initially identified the asset for seizure;

(4) Whether or not the state or local agency seized other assets during the course of the same investigation and whether such seizures were made pursuant to State or local law; and

(5) Whether or not the state or local agency could have achieved forfeiture under State law, with favorable consideration given to a State or local agency which could have forfeited the asset(s) on its own but joined forces with the United States to make a more effective investigation.

Decision-makers should seldom increase a time and effort allocation by more than 50% because of these additional factors, but, if they do so, must carefully and precisely explain and justify in the decision document their decisions based on unusual circumstances.

d. Investigative work performed by district attorney or State attorney general personnel (including work done by police personnel detailed to prosecutors offices) will be considered in calculating equitable shares. A state or local prosecutor's office is eligible for transfers of forfeited property based on such investigative effort in the case, to the extent such an office is allowed to receive money directly from the Federal government or have such money credited to its budget under State or local law.

e. The head of the Department investigative bureau may place tangible property forfeited administratively or judicially into official use in cases in which a Federal, State, or local agency has filed a request for an equitable share of that property.

(1) In making this decision, the head of the Department investigative bureau must consider the following factors:

(a) The relative needs of both the requesting law enforcement agency and the Department investigative bureau for the particular asset:

(b) The uniqueness of the asset and the likely ability to secure such an asset by other seizures in the near future;

(c) The relative significance of the requesting law enforcement agency's participation in the case, as well as all the other factors pertinent to the determination of equitable distribution as set forth in Part III.D.4.b. and c. above;

(d) The potential of, or likelihood that, the requesting agency will be eligible for an equitable share of property from additional seizures arising from the same investigation or from other seizures in the near future;

(e) The impact that a decision to place the property into official use might have on Federal, State, and local relations in that District; and

(f) The past history, volume, and value of previous equitable transfer to the Federal, State, or local agency.

5. Decision-Making Authority for Determining Equitable Transfer

a. The equitable distribution of assets forfeited in an administrative proceeding with an appraised value of \$200,000 or less will be determined by the head of the Department investigative bureau.

(1) The Department investigative bureau's field unit shall forward its report and recommendation to the bureau head for decision.

(2) In making this decision, the head of the Department investigative bureau will consider the report and recommendation forwarded by the field unit and issue to the requesting agency a written ruling on the request.

(3) A copy of the decision document will be forwarded to the United States Attorney, or to the Criminal Division Section Chief in a Department of Justice Criminal Division case, and to the Director, United States Marshals Service.

(4) A copy of the decision document will be made available upon request to the Director, Asset Forfeiture Office, Criminal Division.

b. In the case of assets forfeited in an administrative proceeding with an appraised value greater than \$200,000 and with all judicially forfeited assets, the evaluation and recommendation will be forwarded through the Asset Forfeiture Office to the appropriate United States Attorney or to the Criminal Division Section Chief in a Criminal Division case.

(1) The equitable distribution of assets forfeited in a judicial proceeding with an appraised value of \$200,000 or less will be determined by the United States Attorney or the Criminal Division Section Chief.

(2) In making this decision, the United States Attorney or Criminal Division Section Chief will consider the reports and recommendations forwarded by the head of the Department investigative bureau and will consult with the United States Marshals Service.

(3) The decision document shall be returned to the Director, Asset Forfeiture Office, who will forward the document to the Director, United States Marshals Service, and forward a copy to the Department investigative bureau.

c. In the case of property forfeited in a single proceeding with an appraised value greater than \$200,000, the United States Attorney or Criminal Division Section Chief will forward the evaluation and recommendation of the Department investigative bureau, along with his own recommendation, to the Assistant Attorney General of the Criminal Division, through the Asset Forfeiture Office, who will determine the equitable distribution of those assets if they aggregate less than \$750,000.

(1) In making this decision, the Assistant Attorney General of the Criminal Division will consider the reports and recommendations forwarded by the head of the Department investigative bureau and the United States Attorney or Criminal Division Section Chief and will consult with the United States Marshals Service.

(2) The decision document will be forwarded by the Director, Asset Forfeiture Office, to the United States Marshals Service with copies to the Department investigative bureau, and

the United States Attorney or Criminal Division Section Chief.

d. The Associate Attorney General will make the final determination on the equitable sharing of assets forfeited in a single proceeding with an appraised value of \$750,000 to \$2,000,000. The Deputy Attorney General will make the final determination on the equitable sharing of assets forfeited in a single proceeding with an appraised value of \$2,000,000 or higher.

(1) The request will be processed as in 5.c. above, except that the Assistant Attorney General, Criminal Division, will recommend, to the Deputy Attorney General through the Associate Attorney General, or to the Associate Attorney General, as the case may be, the appropriate equitable distribution of such assets.

(2) The decision document will be returned to the Director, Asset Forfeiture Office, who shall forward it to the Director, United States Marshals Service, and shall copy the United States Attorney or Criminal Division Section Chief, and the Department investigative bureau.

e. In all cases in which judicially forfeited property is located in a judicial district other than where the judicial proceedings are taking place, the party determining the equitable distribution must consult with the respective United States Attorneys prior to determining equitable distribution.

f. Decision-makers should consult each other in situations where inconsistent decisions are possible in factually related forfeiture proceedings that might jeopardize relations between Federal agencies and State or local law enforcement agencies.

g. Once a forfeiture action is concluded and all necessary forms and evaluations have been received by the designated decision-maker, the decision-maker shall endeavor to make his decision within ten days absent unusual circumstances. If a necessary form or evaluation is incomplete as to a material item of information, it is to be returned directly and promptly to the appropriate party for correction and direct return within fifteen days to the decision-maker.

6. Proceeds Placed in the Department of Justice Assets Forfeiture Fund

a. If the federal forfeiture action is concluded successfully, and the property is not placed into official use or transferred to a Federal, State, or local agency, it will be sold and the net proceeds of sale will be placed in the Assets Forfeiture Fund.

b. Forfeited cash will be placed in the Assets Forfeiture Fund.

c. All Department bureaus will promptly notify the United States Marshals Service of any relevant facts affecting seized property. Relevant facts include outstanding bills, invoices, orders of mitigation and remission, orders of transfers to federal, state, or local agencies, orders of designation for official use by Department components, and appraisals. Based upon these and other relevant factors, the United States Marshals Service should appropriately dispose of the property.

7. Disposition of Forfeited Property.

a. State or local agencies may share in seized and forfeited tangible property, and seized and forfeited cash. Federal agencies may receive transfers of tangible property only.

b. Any property that cannot be used for law enforcement purposes must be disposed of in accordance with law.

c. Where tangible property is transferred to qualifying Federal, State, or local agencies, monies from the Assets Forfeiture Fund will not be used to pay liens or mortgages on the property, or to equip the property for law enforcement purposes.

d. The recipient Federal, State, or local agency must pay the liens and mortgages on the forfeited tangible property pursuant to court order or an order of remission or mitigation prior to the transfer of such property.

e. The recipient Federal, State, or local agency may be required to pay direct expenses pertaining to the seizure and forfeiture prior to the transfer of tangible property.

f. In the event of an interlocutory sale of property pending forfeiture, the Director, United States Marshals Service, first must consult with the United States Attorney, Criminal Division Section Chief, or the Director of the Asset Forfeiture Office in the case of judicial forfeitures, or the head of the pertinent Department investigative bureau in the case of administrative forfeitures, to determine the status of any Federal, State, or local law enforcement agency requests for equitable sharing.

8. Transfers to Non-Participating Federal Agencies.

a. All requests by non-participating federal agencies shall be referred to the Director of the United States Marshals Service.

b. In exceptional circumstances, the United States Marshals Service may transfer tangible property to any requesting Federal agency which did not

participate in the acts which led to a seizure or forfeiture.

c. In all such cases, the United States Marshals Service shall consult with the Department investigative bureau responsible for the forfeiture. Where such request is from the United States Department of State for transfer to a foreign government by the Department of State under separate authority, and in any other case it deems appropriate, the United States Marshals Service shall consult also with the Asset Forfeiture Office.

d. Careful consideration shall be given to the value of the property requested, its potential benefit to the United States for law enforcement purposes, and its potential benefit to the Department of Justice Assets Forfeiture Fund.

e. A decision to grant such a request must be approved in writing by the Deputy or Associate Attorney General if the property in question is real property of any value or personal property of an aggregate value exceeding \$25,000. A decision to grant a request for property of lesser value must be approved in writing by the Director of the United States Marshals Service.

f. A report on all such transfers shall be prepared by the United States Marshals Service on a quarterly basis and submitted to the Associate Attorney General.

IV Department of Justice Assets Forfeiture Fund

A. Administration of the Fund

1. The Attorney General delegates the administration of the Department of Justice Assets Forfeiture Fund to the United States Marshals Service under the general supervision of the Associate Attorney General. It will operate under the following guidelines and in accordance with Department of Justice financial management policy. The Associate Attorney General shall establish an interagency committee to advise him or her on the general supervision of the Fund and administration of the asset forfeiture program. This committee shall be known as the Asset Forfeiture Policy Advisory Committee.

2. The United States Marshals Service shall prepare an annual report on the Fund in accordance with 28 U.S.C. 524(c)(6). Agencies reimbursed in accordance with the provisions of these guidelines shall provide information as may be requested by the Marshals Service.

3. The United States Marshals Service will also submit to the Associate

Attorney General on a monthly basis a financial statement as to the current status of the fund. Copies of the monthly United States Marshals Service statement will be provided to those members of the Asset Forfeiture Policy Advisory Committee with whom the Marshals Service has entered into reimbursement agreements to assist the recipient in making decisions as to the use and transfer of forfeited property.

B. Allowable Reimbursements from the Assets Forfeiture Fund

Reimbursements are permitted in two broad categories: asset-specific expenses and program-related expenses. The former take priority over the latter.

1. *Asset-specific expenses.* The following are allowable asset-specific expenses. Expenses identified in a. and b. below, which are termed "management expenses" for the purposes of administering the Assets Forfeiture Fund, have priority over expenses identified in c., d., e., and f., which are termed "contingent expenses" for the purposes of administering the Assets Forfeiture Fund. These, in turn, have priority over payments identified in g., h., and i. below, which are management expenses which have been assigned a lower priority.

a. Expenses incurred by the Department of Justice or other agencies authorized to be reimbursed from the Fund relative to the detention, inventory, safeguarding, maintenance, or disposal of seized or forfeited property, whether incurred on an asset specific or service contract basis;

b. Expenses relative to the detention, inventory, safeguarding, maintenance, or disposal of seized or forfeited property incurred by other Federal, State, and local agencies which assist in the seizure and forfeiture of the property;

c. Payments of orders of mitigation or remission;

d. Payments of valid liens and mortgages pursuant to court order;

e. Expenses incurred for the normal and customary operations of seized or forfeited businesses;

f. Payments of orders of equitable transfer to State or local law enforcement agencies;

g. Payments for contract services directly related to the processing of and accounting for seizures and forfeitures;

h. Expenses related to the storage, protection, and destruction of controlled substances whether incurred on an asset specific or service contract basis;

i. Other expenses incurred by Department investigative bureaus or

other Department components in the seizure and forfeiture of the property, including such case-specific expenses as forfeiture case-related travel and subsistence; costs to obtain and transcribe depositions; filing fees; translation and court reporter fees; messenger services; expert witness costs; exhibit graphic services; and other types of such expenses as approved by the Associate Attorney General.

2. Program-related expenses. The following are allowable program-related expenses. Item a. is the highest priority type of expense; other items are not listed in any priority order.

a. Expenses for the purchase or lease of ADP equipment, and related services, at least 90% of whose use will be dedicated to seizure or forfeiture-related record-keeping;

b. Payments by authorized Department investigative agents for the purchase of controlled substances (identified by 21 U.S.C. 812) as evidence in cases involving violations of the Controlled Substances Act or the Controlled Substances Import and Export Act; (See Part H, *infra*);

c. Expenses incurred to equip any conveyance (whether acquired by forfeiture, purchase, or lease) for drug law enforcement functions; (See Part I, *infra*);

d. Payment of awards in recognition of information or assistance given to a Department investigative bureau pursuant to 28 U.S.C. 524(c)(1)(B); 28 U.S.C. 524(c)(1)(C); or 21 U.S.C. 881(e)(2)(A)(ii); (See Part G, *infra*);

e. Expenses incurred for training related to the execution of seizure or forfeiture-related responsibilities;

f. Expenses incurred for printing program-related training material, such as manuals or handbooks. (Costs for printing legal notices and other case or asset-specific printing costs are considered asset-specific expenses as described in subsection B.1.a. above.)

3. Reimbursement for expenses in categories 1.g., 1.h., and 2. shall not exceed the lesser of \$100 million or whatever amount is authorized by statute in any one fiscal year.

C. Limitations on Use of the Fund

1. The Department of Justice Assets Forfeiture Fund shall not be used to pay any of the following:

a. Salaries of Federal government employees;

b. Expenses in connection with the seizure, detention, and forfeiture of property where the seizure was effected by a Customs officer or where custody

was maintained by the Customs Service, in which case the Customs Assets Forfeiture Fund is available for payment of expenses; or

c. Where property is transferred to state or local law enforcement agencies:

(1) Liens or mortgages on the property; or

(2) Payments to equip the property for law enforcement purposes.

2. Liens and mortgages shall be paid from the Fund only pursuant to an order of remission or mitigation or an order of the court, and when the payment of the lien from the Fund is beneficial to the United States. Otherwise, such amounts shall be paid from the proceeds of the sale of forfeited property. Such payments are beneficial to the United States in two circumstances:

a. Where payment prior to sale will improve the Government's ability to convey title of the property;

b. Where the property is to be placed into official use by a Department investigative bureau or other agency.

3. The United States Marshals Service generally may not pay the claims of unsecured creditors from the Fund, particularly if such payment may jeopardize the legitimate claims of existing lienholders. However, if the United States Marshals Service determines that it is necessary to recognize and satisfy the legitimate claims of unsecured creditors for debts incurred within thirty days before seizure in order to preserve the continued operation of a seized business, it may do so for the following debts:

a. Payment of reasonable salaries and benefits of employees not believed to have been involved in the unlawful activities giving rise to forfeiture and not having an ownership interest in the firm;

b. Payments to third party contractors for goods or services essential to carry on the business of the firm and who continue to provide those goods or services as a regular matter; and

c. Utilities.

All other claims of unsecured creditors shall be determined by the Asset Forfeiture Office under regulations governing the procedures for remission or mitigation of forfeiture contained in 289 CFR 9.1-9.7 and/or by the court.

D. Payment of expenses

1. Expenses incurred by the United States Marshals Service will be paid by Marshals Service district offices from the Fund, in accordance with standard Marshals Service financial management and accounting policies and procedures.

2. Obligations incurred by other agencies will be reimbursed on a monthly basis (where practicable) from the Fund to the agency incurring the costs by means of an inter-agency fund transfer, using Standard Form 1081 (SF-1081), pursuant to a properly executed Reimbursement Agreement Between Agencies (Form DOJ-216).

3. It is the responsibility of the agency incurring the obligation to prepare the DOJ-216 and SF-1081 forms and obtain proper authorization. Each DOJ-216 and SF-1081 form will identify the appropriation to be reimbursed from the Fund.

4. Approved DOJ-216's and SF-1081's will be registered upon receipt at the Marshals Service. Properly authorized requests (SF-1081's) will be processed for payment in order of registration. The Marshals Service will approve the transfer of funds to the appropriation identified if sufficient funds are available, as defined in E.2. below.

5. If an amount requested is in excess of an amount available, as defined in E.2. below, the Marshals Service will not process the request, but will advise the requesting agency of the reason. The Marshals Service and the requesting agency should attempt to agree on deferral or cancellation of the request, as appropriate.

6. If the Marshals Service and the requesting agency cannot agree on deferral or cancellation of the request, the Marshals Service shall inform the Associate Attorney General of such disagreement and provide its recommendation for delayed payment or other appropriate action. The Marshals Service shall provide notice of the action taken by the Associate Attorney General to the agency submitting the SF-1081.

E. Priority Payments

1. Department policy is that reimbursement of asset-specific expenses has priority over reimbursement of program-related expenses. A minimum balance of ten million dollars (\$10 million) will be maintained in the Fund to ensure the reimbursement of asset-specific expenses.

2. Requests for reimbursement for program-related expenses submitted to the Marshals Service under the terms of a reimbursement agreement pursuant to subsection F below will be processed if:

a. a sufficient amount remains under a current year reimbursement agreement to cover the requested reimbursement; and

b. the Fund balance exceeds by at

least \$10 million the amount of the request.

F Preparation of Reimbursement Agreements

1. The Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Marshals Service, the Immigration and Naturalization Service, the United States Postal Service, the Executive Office for United States Attorneys, the Criminal Division, and any other agency which anticipates requesting reimbursement for expenses from the Department of Justice Assets Forfeiture Fund will prepare estimates of anticipated expenditures and, after coordination with, and review by, their internal budget and finance staffs, submit them to the Asset Forfeiture Policy Advisory Committee at least three months prior to the fiscal year in which the expenses are anticipated.

2. Anticipated requests for reimbursements shall be divided into each of the separate categories set forth in Parts B.1. and 2. above.

3. The Asset Forfeiture Policy Advisory Committee will evaluate the estimates and recommend a budget for program-related expenses and estimates for asset-specific expenses to the Associate Attorney General.

4. Members of the Asset Forfeiture Policy Advisory Committee may submit to the Associate Attorney General, concurrent with the Committee's recommendations, minority recommendations.

5. The Associate Attorney General will approve a budget for program-related expenses and estimates for asset-specific expenses, if possible, prior to the new fiscal year, which will form the basis for authorizing the establishment of reimbursement agreements between the United States Marshals Service, as administrators of the Fund, and the appropriate agency head or his designee. The budget and the estimates may be for periods of time less than one year (e.g., six months). The Associate Attorney General, or the Committee, retains authority to approve specific types of reimbursement expenses on an individual basis.

6. It is not permissible for a recipient of reimbursement funds to receive funds for reimbursement of program-related expenses in excess of that authorized in the budget for a specific program-related category or in variance with any other limitations imposed by the budget or the Associate Attorney General for program-related expenses. Requests for augmentation or change must be

approved by the Associate Attorney General.

7. Any agency seeking previously unanticipated reimbursement of asset-specific expenses in excess of the amount authorized in the approved estimates for a specific category or in variance with any other limitations imposed by the approved estimates or the Associate Attorney General for asset-specific expenses shall advise the Asset Forfeiture Policy Advisory Committee as soon as the need for such reimbursement is anticipated.

8. The Asset Forfeiture Policy Advisory Committee may recommend adjustments to the budget for program-related expenses and the approved estimates for asset-specific expenses during the fiscal year. The Associate Attorney General may order adjustments to the approved estimates and the budget during the fiscal year based either on appeals, recommendations of the Committee, or his or her own decision.

G. Payments of Awards

1. Application for awards will be accepted on behalf of any individual. The term "individual" encompasses corporations and associations.

2. Awards will not be paid to state or local government entities, or to employees or agents thereof. Any information or assistance provided by a state or local entity will be compensated under rules governing "equitable transfers."

3. Awards pursuant to 28 U.S.C. 524(c)(1)(D) or (C) will be paid only after disposition of forfeited property.

4. Awards pursuant to 28 U.S.C. 524(c)(1) (B) or (C) may not exceed \$150 thousand or one-fourth the "amount realized by the United States from the property forfeited," whichever is less.

a. If forfeited property is sold, then the "amount realized by the United States from the property forfeited" is the gross sale proceeds *minus* management expenses paid from the Fund.

b. If forfeited property is retained for official use, the "amount realized by the United States from the property forfeited" is the value of the property at the time of seizure *minus* management expenses paid from the Fund.

5. All applications for awards will be directed to the field office of the Department investigative bureau responsible for processing the forfeiture. Non-DOJ agencies (e.g., task force members such as IRS) should be instructed to direct any inquiries concerning these awards to the Department investigative bureau

responsible for processing the forfeiture.

6. The investigative bureau field unit receiving or initiating an application for an award will prepare a written report that will evaluate the value of the information or assistance provided by the applicant and recommend an amount to be paid.

7. If more than one application for an award pursuant to 28 U.S.C. 524(c)(1) (B) or (C) is received in a single action for forfeiture, the applications should be handled in a consolidated manner. Decisions on all applications should be made at the same time, and should consider the comparative value of information or assistance provided by each applicant and the aggregate amount of award(s) to be made.

8. Requests for reimbursement for awards pursuant to 28 U.S.C. 524(c)(1)(B) shall:

a. Identify the property or properties, including agency and/or federal district court case numbers; and

b. Identify the recommended dollar amount of the award.

9. Approval of awards will be in accordance with 28 U.S.C. 524(c)(2) and any subsequent delegations of authority.

H. Purchase of Evidence

1. Only DEA and FBI may request amounts to be reimbursed for the purchase of evidence.

2. Approval of amounts for the purchase of evidence will be in accordance with 28 U.S.C. 524(c)(3) and any subsequent delegations of authority.

3. The investigating agency is responsible for control over the release of cash to agents and for informing agents of the responsibility to account for the use and recovery of the cash.

4. If a participating agency recovers part or all of the monies that are used to purchase evidence for which it has obtained reimbursement from the Fund, the recovered monies will be credited to the Fund.

I. Payments to Equip Forfeited Conveyances for Drug Law Enforcement Functions

1. Decisions to retrofit a conveyance for drug law enforcement functions shall be made by the organizational component within the agency which is responsible for management of the conveyance to be retained.

2. Unreasonable amounts shall not be spent on equipping (retrofitting) forfeited, leased, or owned conveyances for drug law enforcement purposes. Extensive work to convert a conveyance to heavy duty use should be limited by

considering the estimated useful life of the conveyance and the availability of similarly equipped conveyances.

V. Discontinuance of Federal Forfeiture Actions

A. Deferral of Federal Judicial Forfeiture Proceedings

1. A decision to forego a Federal judicial forfeiture proceeding against any seized asset in favor of a State or local forfeiture proceeding requires the personal approval of the United States Attorney after review of the evaluation and recommendation of the concerned Department investigative bureau.

2. In making this decision, the United States Attorney must consider the financial status of the Department of Justice Assets Forfeiture Fund.

3. Judicial forfeitures foregone in favor of state or local proceedings are to be reported by the United States Attorney in writing, within five days, to the Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, DC 20530.

B. Deferral of Federal Administrative Forfeiture Proceedings

1. A decision to forego a federal administrative forfeiture proceeding against any seized asset in favor of a State or local forfeiture proceeding requires the approval of the head of the Department investigative bureau.

2. In making this decision, the head of the Department investigative bureau must consider the financial status of the Assets Forfeiture Fund and, where appropriate, consult with the United States Marshals Service in that regard.

3. Department investigative bureaus must develop procedures for recording these decisions and providing reports as required.

VI. United States Customs Service Forfeitures

A. Pursuant to Title 28 United States Code, Section 524(c), all proceeds from the forfeiture of property under any law enforced or administered by the Department are to be deposited in the Department of Justice Assets Forfeiture Fund, except as specified in 28 U.S.C. 524(c)(4) and except to the extent that the seizure was effected by a United States Customs Service officer or that custody was maintained by the Customs Service, in which case the provisions of 19 U.S.C. 1613a (Customs Forfeiture Fund) shall apply.

D. To the extent that the United States Marshals Service may have the authority and the capacity to do so, and pursuant to agreement between them and the United States Marshals Service and the Customs Service, the United States Marshals Service may store and maintain seized property for the Customs Service.

1. Where the United States Marshals Service maintains custody of property seized by a Customs officer, the Marshals Service shall seek reimbursement from the Customs Service for the expenses of such custody prior to the deposit of the net proceeds into the Customs Forfeiture Fund.

2. In instances where proceeds are to be deposited in the Department of Justice Assets Forfeiture Fund and the Customs Service, as a substitute custodian, has maintained custody of property seized by the Department, the Department will reimburse the Customs Service for the expenses of such custody.

C. Requests for transfers of forfeited property by federal agencies, or by participating state and local law enforcement agencies, in forfeitures where the seizure was effected by a Customs officer or custody was maintained by the Customs Service should be directed pursuant to 19 U.S.C. 1616 to the Customs Service for evaluation and forwarding to the Assistant Secretary of Treasury for Enforcement with an information copy to the United States Attorney in the district of seizure.

D. In the event of an unresolved dispute concerning whether a given forfeiture constitutes a Customs or Department forfeiture for purposes of cash or proceeds disposition, or for Federal, State, and local transfers, the Associate Attorney General and the Assistant Secretary of Treasury for Enforcement shall resolve the issue. Where appropriate, they may submit the issue to the Organized Crime Drug Enforcement Task Force Working Group for recommendation.

Date: April 9, 1987.

Edwin Meese III,

Attorney General.

Date: November 30, 1987.

Brad Cates,

Director, Asset Forfeiture Office.

[FR Doc. 87-28377 Filed 12-9-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Asset Forfeiture Office

Publication of the Attorney General's Guidelines on Seized and Forfeited Property

FOR FURTHER INFORMATION CONTACT:
Director, Asset Forfeiture Office,
Criminal Division, Bond Building, 10th
floor, 1400 New York Avenue, NW.,
Washington, DC, 20005. (202) 786-4950.

APPENDIX E

Date:
Requesting Agency:
Case Name:
Case Number:
SYSID Number:

U.S. Department of Justice

Application for Transfer of Federally Forfeited Property

To Be Completed by Requesting Agency Within 30 Days Following Seizure

1. Requesting Agency or Agencies:

Agency Name:
Agency Address:

Contact Person/Title:
Telephone Number: ()

2. Description of Requested Property:

List and describe the property requested (include VIN or serial number, if known). If you are requesting forfeited cash or proceeds of sale of forfeited property indicate a percentage.

3. Intended Law Enforcement Use:

Please be specific.

4. Identification of All State or Local Law Enforcement Agencies That Participated in this Investigation:

5. Description of Assets Seized for State Forfeiture in this Investigation, if any:

Property

Appraised Value

Date:
Requesting Agency:
Case Name:
Case Number:
SYSID Number:

6.a. Narrative Description:

6.b. Specific Factors:

1. Which agency initiated the investigation?
2. Which agency identified the assets?

Your contribution:

3. Percentage participation in the overall investigation
4. Extraordinary costs incurred (*be specific as to purpose*)

_____ %

\$ _____

Purpose: _____

5. Number of manhours
6. For what total period of time did you participate in the investigation?

Date:
Requesting Agency:
Case Name:
Case Number:
SYSID Number:

7. Fiscal Officer to Whom Disbursement of Money Should be Made:

Name/Title:
Address:

Telephone Number: ()

8. Official to Whom Transfer Documents Should be Delivered:

Name/Title:
Address:

Telephone Number: ()

9. Official to Whom Property Should be Delivered:

Name/Title:
Address:

Telephone Number: ()

10. Certifications:

- a. The requester agrees to report on the actual use of equitably transferred property upon request. The requester agrees to pay fees and expenses necessary to effect transfer of title not later than the time of transfer. The requester certifies that the above information is true and accurate.

Signature/Title

Date

- b. As legal counsel for _____ I have reviewed this Application
(Requester)
for Transfer of Federally Forfeited Property and I certify that _____
(Name)
has the authority to accept the forfeited property and is the official to whom transfer documents should be delivered. It is my
opinion that _____ is the proper fiscal officer to whom disbursement of money is
(Name)
to be made. I know of no state or local law prohibiting the transfer of this property to _____
(Requester)

Signature/Title

Date

Address:

Telephone Number: ()

APPENDIX F

APPENDIX F

CLAIMS BY VIRGINIA LAW ENFORCEMENT AGENCIES OF FEDERAL AGENCIES FOR SHARING OF FORFEITED PROPERTY AND PROCEEDS

This table was designed to detail the claims made of the U.S. Government after forfeiture proceedings when the Drug Enforcement (DEA) and the Federal Bureau of Investigation (FBI) may, as lead agency in the investigation or by "adopting" a case, share the forfeited property or its proceeds with a local law enforcement agency.

Data was obtained from the FBI, DEA and the U.S. Marshals. Blanks in the data are due to incomplete postings, pending claims and variation in the reporting format among the agencies providing the data.

Column Key

- | | |
|----------------------|--|
| (1) Agency | The name of the law enforcement agency filing the claim. |
| (2) Type of Property | A classification given the seized property according to the following:

B = Boat, vessel
C = Cash
RP= Real property
J = Lab equipment, chemicals
M = Computer equipment
P = Precious metal, coins
O = other
V = Vehicle
W = Weapons
()= Indicates the Property had multiple claims for it. It is counted only once in value total and the () are not used on the primary or largest % claimant. |
| (3) Date Rec'd. | The years, or, months and year the claim was received by the federal agency involved. |
| (4) Date Appr. | The date the claim was approved, if given. DEA claims may be assumed to have been granted as they are reviewed before submission. The "Comments" column was used if any indication was given that the award was not approved or pending. |
| (5) Amount | This is the appraised value or cash amount of the property claimed. If the |

value is not given, the property is briefly described, if known.

- (6) % The percentage of column 5 that was requested by the local law enforcement agency. This figure was not available where the FBI was the leading agency.
- (7) DEA OR FBI The federal agency with which the local enforcement agency filed the claim. F is used for FBI and D is used for DEA.
- (8) Total Claims Paid This is the total amount of funds paid to the Agency through July, 1988. This figure was reported by the U.S. Marshals and may not agree with column totals for that agency due to posting and processing delays. The data item is reported as a DEA or FBI case.
- (9) Comments Any comments that might help to explain an entry.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)		(9)
AGENCY	TYPE OF PROPERTY	DATE REC'D	DATE APPR.	AMOUNT	%	DEA OR FBI	TOTAL CLAIMS PAID		COMMENT
							DEA	FBI	
Albemarle Co. P.D.	RP	4/87	8/87	N/A		F		11,169	
	C	4/88	4/88	14,174		F			
	V	2/88		Boat		F			PENDING
	V	2/88		Motorcy.		F			DENIED
	V	2/88	5/88	Auto		F			
	V	2/88		Auto		F			DENIED
	V	2/88	5/88	Motorcy.		F			
	M	2/88		Comp.eq.		F			DENIED
	M	2/88		Printer		F			DENIED
	C	5/88		47,200		F			PENDING
P	5/88		Silver		F			PENDING	
Amelia Co. S.O	C	87		10,113		D			
Arlington Co. P.D.	C	87		10,030	10	D	55,103	132,930	
	C	87		11,000	10	D			
	C	87		3,166	10	D			
	C	87		11,290	10	D			
	C	87		7,181	90	D			
	C	87		7,000	90	D			
	C	87		3,500	90	D			
	D	88		1,422	90	D			
	C	88		1,224	90	D			
	C	88		1,116	90	D			
	C	88		44,321	10	D			
	C	88		1,700	10	D			
	V	86		15,000	100	D			
	V	88		8,900	100	D			
	O	88		200	100	D			
	V	88		6,075	100	D			
	V	88		6,850	100	D			
C	7/87	8/87	148,000		F				
Augusta Co. S.O.	C	1/87	5/87	8,512		F			
	C	6/88		5,400		F			PENDING

AGENCY	(2)	(3)	(4)	(5)	(6)	(7)	(8)		(9)	
	TYPE OF PROPERTY	DATE REC'D	DATE APPR.	AMOUNT	%	DEA OR FBI	DEA	FBI	COMMENTS	
Bristol P.D	V	3/88		79 Cad.				3,775	PENDING	
Buckingham Co. S.O.	RP	85		57,981	75	D	43,486			
Carroll Co. S.O.	V	86		9,000	100	D	9,000		FLORIDA CASE	
Charlottesville P.D.	V	10/85	3/87	84 Mazda		F		11,088		
	P	3/87	11/87	Gold		F				
	(RP)	4/87	7/87			F				
	(V)	2/88		Boat		F				PENDING
	(V)	2/88		Motorcy.		F				DENIED
	(V)	2/88		Auto		F				DENIED
	(V)	2/88	5/88	Auto		F				SHARED V.S.P
	(V)	2/88	5/88	Motorcy.		F				SHARED V.S.P
	(M)	2/88		Comp.eq.		F				DENIED
	(M)	2/88		Comp.eq.		F				DENIED
	(C)	5/88		47,200		F				PENDING
(P)	5/88		Silver		F					
Chesapeake P.D.	C	87		10,113		D	7,148			
	C	88		7,942	90	D			PENDING	
Chesterfield P.D.	C	88		372,470	64	D	242,106		PENDING	
Fairfax Co. P.D.	C	4/86	8/87	37,829		F	8,425	34,086		
	(RP)	83		3,200,000	7	D				
	(J)	83		790,000	7	D				
	(O)	83		120,000	7	D				
	(W)	83		122,000	7	D				
	(V)	83		63,000	7	D				
	V	86		8,700	100	D				
	V	88		5,000	100	D				
	C	88		3,444	90	D				
	C	88		1,906	90	D				
	C	88		1,009	90	D				

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)		(9)
AGENCY	TYPE OF PROPERTY	DATE REC'D	DATE APPR.	AMOUNT	%	DEA OR FBI	DEA	FBI	COMMENTS
Henrico Co. P.D. (cont)	(C)	86		30,700	75	D			
	C	87		7,500	45	D			
	(C)	87		4,500	45	D			
	(C)	87		6,073	45	D			
	(C)	87		4,500	45	D			
	C	87		106,000	40	D			
	C	88		2,337	50	D			
	C	88		9,373	50	D			
	(C)	88		372,470	10	D			
	C	3/88		5,247		F			PENDING
	V	86		40,000	100	D			
	(V)	86		20,000	50	D			
	B	86		25,000	100	D			
	(V)	86		7,100	100	D			
	(V)	86		10,400	100	D			
	(V)	86		6,500	100	D			
	(V)	86		5,100	100	D			
	(V)	86		18,675	100	D			
V	87		2,300	100	D				
(V)	87		3,200	100	D				
V	88		14,000	100	D				
Henrico Co.S.O.	(C)	86		4,195	90	D	3,776		
Loudoun Co. S.O.	(C)	83		1,828,350	1	D			
	(RP)	83		3,200,000	1	D			
	(J)	83		790,000	1	D			
	(O)	83		1,120,000	1	D			
	(V)	83		3,200,000	1	D			
	(W)	83		122,000	1	D			
Lynchburg P.D.	C	4/88		1,080		F			PENDING
Mangswas P.D. (SIC)	C	88		3,138	90	D			
	C	88		1,462	90	D			

(1) AGENCY	(2) TYPE OF PROPERTY	(3) DATE REC'D	(4) DATE APPR.	(5) AMOUNT	(6) %	(7) DEA OR FBI	(8) TOTAL CLAIMS PAID		(9) COMMENT
							DEA	FBI	
Manassas Park P.D.	C	5/86	8/87	1,881		F		1,694	
Newport News P.D.	V (B)	85 85		4,000 15,500	100 100	D D	19,500		
Norfolk P.D.	C RP C C (C)	85 5/86 6/87 88 88	10/88 11/87	39,900 310,770 50,000 87,864 29,000	80 100 90 45 90	F F F D D		91,495	
Petersburg P.D.	C (C) (C) C V V	88 88 88 88 87 88		19,000 2,344 3,760 3,000 8,600 15,000	90 90 90 90 100 100	D D D D D D	35,484		
Portsmouth P.D.	V	87		4,000	100	D			
Prince George P.D.	(C)	88		372,470	6	D	22,348		
Prince William Co P.D.	C C C C C C C	3/87 88 88 88 88 88 88		1,329 1,331 1,088 2,200 3,334 1,517 1,579	90 90 90 90 90 90 90	F D D D D D D	8,814		REJECTED
Powhatan Co. S.O.	(C) (C)	87 88		10,113 29,800	90	D D			
Richmond P.D.	V C C C	85 10/87 10/87 87	4/88 2/88	12,000 5,752 5,080 4,283	100 90 90	D F F D	15,855	14,184	

AGENCY	(2)	(3)	(4)	(5)	(6)	(7)	(8)		(9)
	TYPE OF PROPERTY	DATE REC'D	DATE APPR.	AMOUNT	%	DEA OR FBI	TOTAL CLAIMS PAID		COMMENT
							DEA	FBI	
Richmond P.D. (cont)	C	87		2,201	45	D			
	(C)	87		79,200	45	D			
	(C)	87		5,000	45	D			
	(C)	87		8,697	45	D			
	(C)	87		4,790	45	D			
	(C)	4/88		5,247		F			PENDING
	V	3/88		84 Olds.		F			GRANTED
	C	3/88		4,928		F			PENDING
Roanoke Co. S.O.	C			46,613	25	D	86,153		
	(C)			37,573	45	D			
	(C)			32,200	25	D			
	V	84		25,000	100	D			
	(V)	84		3,000	100	D			
	V	85		17,150	100	D			
	C	86		2,800	30	D			
	C	87		32,778	50	D			
	V	87		10,000	100	D			
Roanoke P.D.	(C)	84		46,613	25	D	82,774		
	(C)	84		37,573	45	D			
	C	86		2,800	50	D			
	(V)	84		20,000	100	D			
	(V)	84		9,000	100	D			
Rockbridge Co. S.O.	V	7/88		79 Jeep		F			Pending
Salem P.D	V	5/88	6/88	84 Corv.		F			
Southampton P.D.	(RP)	6/87	10/87	310,770		F		13,284	
Stafford Co. S.O.	V	88		14,000	100	D	14,000		
Suffolk P.D.	C	6/86	6/86	105,418		F		94,858	
	C	88		35,117	10	D			
	(C)	88		63,085	10	D			

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)		(9)	
AGENCY	TYPE OF PROPERTY	DATE REC'D	DATE APPR.	AMOUNT	%	DEA OR FBI	DEA	FBI	COMMENT:	
Univ. of Virginia P.D.	P	6/87		Gold		F		16,817	GRANTED	
	(P)	6/87	11/87	Gold/Sil.		F				
	V	1/87	6/87	82 Mazda		F				
	(RP)	4/87	8/87			F			GRANTED	
	(C)	6/87	3/88	14,174		F				
	C	86		66,510	50	D	78,417			
Va. Beach P.D.	V	85		11,000	100	D				
	V	86		5,500	100	D				
	V	87		8,425	100	D				
	V	88		9,050	100	D				
	V	88		6,800	100	D				
	(V)	88		6,800	100	D				
	Va. State Police	RP	83		3,200,000	46	D	234,838	90,455	
		(J)	83		790,000	46	D			
		(O)	83		1,120,000	46	D			
		(W)	83		122,000	46	D			
(V)		83		63,000	46	D				
(V)		85		12,000	100	D				
(C)		85		68,758	45	D				
C		83		1,828,350	46	D				
V		86		30,809	100	D				
B		10/85	10/85	65,025	100	F			BOAT	
C		87		11,500		D				
C		87		10,856		D				
C		87		59,427	90	D				
(C)		87		11,466	90	D				
(C)	87		66,210	90	D					
C	88		7,400	90	D					
(C)	88		2,990		D					
(C)	88		5,220		D					
C	88		4,490	90	D					
(C)	88		372,470	5	D					
V	88		20,000	100	D					
V	88		15,000	100	D					

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)		(9)
AGENCY	TYPE OF PROPERTY	DATE REC'D	DATE APPR.	AMOUNT	%	DEA OR FBI	TOTAL CLAIMS PAID		COMMENT
							DEA	FBI	
Va. State Police (cont)	V	88		5,000	100	D			
	(B)	2/88		Boat		D			PENDING
	V	2/88	7/88	Motorcy.		F			
	(V)	2/88		79 Chev.		F			DENIED
	V	2/88	5/88	81 Mazda		F			
	V	2/88	5/88	Motorcy.		F			
	M	2/88		Comp. eq.		F			DENIED
	M	2/88		Comp. eq		F			DENIED
(C)	5/88		47,200		F			PENDING	
(P)	5/88		Silver		F			PENDING	
Winchester P.D.	C	9/87	4/88	974		F		20,940	
	V	9/87	3/88	79 Chev.		F			
	C	3/88	5/88	10,883		F			
Wythe Co. S.O.	V		3/88	8,725	100	D	8,725		

APPENDIX G

METHOD OF DISTRIBUTION OF FORFEITED DRUG ASSETS

Alabama

Distributed to municipal fund of municipality whose law enforcement agency conducted investigation.

Alaska

Retained by local law enforcement agency.

Arizona

Deposited into local anti-racketeering fund or, if no fund, into general fund.

Arkansas

Deposited into general fund. Real property- 40% to state treasury; 40% to arresting agency; 20% to prosecuting county.

California

65% to state, local entities involved in seizure; 20% to Department of Mental Health; 10% to prosecutorial Agency; 5% to non-profit groups assisting with arrest.

Colorado

10% to general fund; 1.5% to District Attorney; remainder to seizing agency, victims, and drug and alcohol fund.

Connecticut

Not addressed in statute.

Delaware

Deposited in Special Law Enforcement Fund.

District of Columbia

Fund for rehab. of addicts; education, drug abuse prevention.

Florida

To seizing county's governing body in special law enforcement fund.

Georgia

To local political subdivision where property was seized.

Hawaii

Not addressed in statute.

Idaho

Deposited into drug enforcement donation account.

Illinois

Deposited into general fund of seizing county.

Indiana

Deposited with treasurer of the state in the Commonwealth fund.

Iowa

Not addressed in statute.

Kansas

Transferred to unit of government having custody of forfeited assets.

Kentucky

Seizing agency may return up to \$50,000 or \$100,000 to be used solely for law enforcement purposes. Excess to a fund for drug rehab. and education.

Louisiana

Deposited in state Drug Enforcement Seizure and Forfeiture fund.

Maine

Distributed to state/local law enforcement agencies solely for drug enforcement.

Maryland

Deposited to general fund of state or political subdivision that did seizure.

Massachusetts

Distributed equally between office of the prosecutor and law enforcement agency responsible for the forfeiture.

Michigan

Distributed to the entity with budgetary authority over seizing agency, for drug law enforcement.

Minnesota

One-third to state drug abuse authority; one-third to prosecuting agency with jurisdiction over-crime; one-third to investigating agency.

Mississippi

50% to state treasurer; 50% to participating law enforcement agencies.

Missouri

Deposited into the state general fund.

Montana

Deposited into the governing entity of the seizing agencies drug forfeiture account.

Nebraska

Deposited into state school fund.

Nevada

Not addressed in statute.

New Hampshire

10% to seizing agency; 10% to state drug abuse prevention fund; remainder to drug forfeiture fund or state general fund.

New Jersey

To entity funding prosecuting agency, shared in proportion to contribution of arrest, with arresting agency.

New Mexico

To general fund of state, county, or municipality of the seizing agency.

New York

To the general fund of the county where the seizure took place.

North Carolina

To school fund of county where forfeiture took place.

North Dakota

Up to \$500,000 deposited in assets forfeiture fund, remainder to appropriate state or local general fund.

Ohio

To law enforcement trust fund of political subdivision of agency that made seizure.

Oklahoma

One-third to arresting office; one-third to victims' compensation fund in locality; one-third to jail maintenance fund.

Oregon

Not addressed in statute.

Pennsylvania

Not addressed in statute.

Rhode Island

The maximum amount of proceeds that may be retained by a seizing agency per forfeiture and per calendar year depends on the agency involved and the population of the agency's community with amount to be allocated as follows: state police- \$1,500 per forfeiture, \$20,000 per year; cities with a population less than or equal to 20,000-\$500 per forfeiture; \$5,000 per year; cities greater than 20,000-\$1000 per forfeiture, \$7,500 per year. The balance of proceeds in each forfeiture goes to the state's general treasury.

South Carolina

25% to seizing agency, 75% to special state account.

South Dakota

To state drug control fund.

Tennessee

To account of government whose agency seized assets.

Texas

To special criminal investigation fund administered by seizing agency.

Utah

To state general fund.

Vermont

Not addressed in statute.

Virginia

To Literary Fund.

Washington

One-half to general fund of local or state government of seizing agency, one-half to state public safety and education account.

West Virginia

10% to office of prosecutor which initiated proceeding; remainder to special law enforcement investigation fund administered by seizing agency.

Wisconsin

At least 50% to school fund, unless money, in which case all money to school fund.

Wyoming

Not addressed in statute.

APPENDIX H

Proposed Constitutional Amendment:

Amend SJR 36 by inserting the following language in line 33 after the word "treasury":

"and shall be distributed by law for the purpose of promoting law enforcement."

SENATE JOINT RESOLUTION NO. 36

Offered January 25, 1988

Proposing an amendment to Section 8 of Article VIII of the Constitution of Virginia relating to the Literary Fund.

Patron—Gartlan

Referred to the Committee on Privileges and Elections

RESOLVED by the Senate of Virginia, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia namely:

Amend Section 8 of Article VIII of the Constitution of Virginia as follows:

ARTICLE VIII
EDUCATION

Section 8. The Literary Fund.

The General Assembly shall set apart as a permanent and perpetual school fund the present Literary Fund; the proceeds of all public lands donated by Congress for free public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the Commonwealth by forfeiture except as hereinafter provided, of all fines collected for offenses committed against the Commonwealth, and of the annual interest on the Literary Fund; and such other sums as the General Assembly may appropriate. But so long as the principal of the Fund totals as much as eighty million dollars, the General Assembly may set aside all or any part of additional moneys received into its principal for public school purposes, including the teachers retirement fund.

The General Assembly may provide by general law an exemption from this section for the proceeds from the sale of all property seized and forfeited to the Commonwealth for a violation of the criminal laws of this Commonwealth proscribing the manufacture, sale or distribution of a controlled substance or marijuana. Such proceeds shall be paid into the state treasury

The Literary Fund shall be held and administered by the Board of Education in such manner as may be provided by law The General Assembly may authorize the Board to borrow other funds against assets of the Literary Fund as collateral, such borrowing not to involve the full faith and credit of the Commonwealth.

The principal of the Fund shall include assets of the Fund in other funds or authorities which are repayable to the Fund.

Official Use By Clerks
Agreed to By The Senate
without amendment []
with amendment []
substitute []
substitute w/amdt []
Agreed to By The House of Delegates
without amendment []
with amendment []
substitute []
substitute w/amdt []
Date: _____ Date: _____
Clerk of the Senate Clerk of the House of Delegates

§18.2-249 Seizure and forfeiture of property used in connection with or derived from illegal drug transactions. -- A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of this article; (i) all money, medical equipment, office equipment, laboratory equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with the illegal manufacture, sale or distribution of controlled substances in violation of §18.2-248 or of marijuana in violation of §18.2-248.1, except real property shall not be subject to lawful seizure unless the minimum prescribed punishment for the violation is a term of not less than five years; (ii) everything of value furnished, or intended to be furnished, in exchanged for a controlled substance in violation of §18.2-248 or of marijuana in violation of §18.2-248.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange together with any interest or profits derived from the investment of such money or other property.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 of Title 19.2 of this Code.

~~All property seized under this section shall be disposed of in the same manner as provided for the disposition of motor vehicles confiscated for illegally transporting alcoholic beverages and all of the provisions specified in subsections (e) through (j) of § 4-56 shall apply mutatis mutandis. With respect to all real property seized, any notice as may be filed by the attorney for the Commonwealth, and all final judgments as entered by the court, shall also be filed in the clerk's office of the circuit court wherein the property is~~

~~located and indexed in the land records in the name or names of those persons whose interests appear to be affected thereby~~

~~C. Notwithstanding the provisions of § 4-56 (j) as incorporated in subsection B, the agency seizing any motor vehicle, boat or aircraft may, after court forfeiture, petition the court for authorization to use and operate such motor vehicle, boat or aircraft for the investigation of narcotics and controlled substances in this Commonwealth by the agency seizing the motor vehicle, boat or aircraft. Upon finding that the agency has a law enforcement need to use the motor vehicle, boat or aircraft for such purpose, the court may permit such use by the agency for a period of time deemed appropriate by the court. When the agency ceases to use the motor vehicle, boat or aircraft, such motor vehicle, boat or aircraft shall be disposed of pursuant to subsection B of this section, and all the provisions of subsection B of this section shall apply. The agency using or operating each such motor vehicle or aircraft shall have insurance on each vehicle used or operated for liability and property damage in at least the minimum amounts stipulated under § 46-1-504 for motor vehicles or subdivision A 1 of § 6-1-88.2 for aircraft. If such insurance coverage is not provided, the governmental unit, whether state or local, of which such agency is a part shall be liable for any liability incurred up to these minimum amounts.~~

~~D. In all cases of forfeiture under this section, the actual expenses incident to the custody and preservation of the seized property prior to forfeiture, and the expenses incident to the sale thereof, including commissions, shall be taxed as costs and shall be paid to the person or persons who incurred these costs out of the net proceeds from the sale of such property. The residue, if any, shall be paid into the Literary Fund. The party or parties in interest to any forfeiture proceeding commenced under this section shall be entitled to reasonable attorney's fees and costs if the forfeiture proceeding is terminated in favor of such party or parties. Such fees and costs shall be paid by the Commonwealth from the Criminal Fund.~~

CHAPTER 22.1

FORFEITURES IN DRUG CASES

§19.2-386.1 Commencing an action of forfeiture. -- A. An action against any property subject to forfeiture under the provisions of §18.2-249 shall be commenced by the filing of a civil complaint in the clerk's office of the circuit court. Any complaint shall be filed in the name of the Commonwealth and shall be filed by the attorney for the Commonwealth in the city or county wherein the action for forfeiture is being brought or may be filed by the Attorney General if so requested by the attorney for the Commonwealth. Such complaint shall (i) specifically describe the property, (ii) set forth in general terms the grounds for forfeiture of the named property, (iii) pray that the same be condemned and sold or otherwise be disposed of according to law, and (iv) ask that all persons concerned or interested be noticed to appear and show cause why such property should not be forfeited.

B. Venue for an action of forfeiture shall lie in the county or city where (i) the property is located, (ii) the property is seized, or (iii) an owner of the property could be prosecuted for the illegal conduct alleged to give rise to the forfeiture.

C. When property has been seized under §18.2-249, a complaint against that property shall be filed within 90 days of the date of seizure or the property shall be released to the owner or lien holder. In all cases, an action of forfeiture shall be commenced within three years of the date of actual discovery by the Commonwealth of the last act giving rise to the forfeiture or such action will be barred.

Comments - This is derived substantively from §§19.2-369, 370 and 371 and §4-56(d) although "complaints" are used instead of "informations" to clarify the civil nature of the forfeiture. The venue provision is new. The limitations provision is a combination of old and new. It establishes a set three-year limitation where property has not been seized, but only allows the State to hold property for 90 days without starting the adjudicative process. There is currently no limitation in the Title 19.2 procedure and a 60 day requirement in Title 4. This also avoids the problem illustrated recently when the

Virginia Supreme Court reversed a circuit court's forfeiture of a drug dealer's Mercedes due to the lapse of the 60 day time limit. Haina v. Commonwealth, 235 Va. ___, 4 VLR 3086 (June 10, 1988).

§19.2-386.2 Seizure of named property. -- A. When any property subject to forfeiture under §18.2-249 has not been seized at the time a complaint naming that property is filed, the clerk of the circuit court wherein the complaint is filed shall issue a warrant to the Sheriff or other state or local law enforcement officer authorized to serve criminal process in the jurisdiction where the property is located, describing the property named in the complaint and authorizing its immediate seizure.

B. In all cases of seizure of real property, a notice of lis pendens shall be filed with the clerk of the circuit court of the county or city wherein the property is located and shall be indexed in the land records in the name or names of those persons whose interests appear to be affected thereby.

Comments - The first paragraph is taken from §19.2-372. The second is from §18.2-249B.

§19.2-386.3 Notice of seizure for forfeiture and notice of pending forfeiture. -- A. Upon seizure of any property under §18.2-249, the agency seizing the property shall forthwith notify the attorney for the Commonwealth in the county or city in which the seizure occurred who shall, within 21 days therefrom, file a notice of seizure for forfeiture with the clerk of the circuit court. Such notice of seizure for forfeiture shall name the property seized, identify the date on which the seizure occurred, and identify all owners and lien holders if known. The clerk shall mail by first class mail notice of seizure for forfeiture to the last known address of all identified owners and lien holders. No notice of seizure for forfeiture is required when a complaint has been filed or when seizure of the property is pursuant to a warrant.

B. Upon the filing of a complaint, all owners and lien holders of the named property then known to or reasonably discoverable by the Commonwealth shall be made

parties defendant, and shall be served with a notice of pending forfeiture in the manner provided by law for serving a notice, at least ten days before the date specified for the hearing on the complaint if they be residents of this State. If the owners or lien holders are unknown or nonresidents, or cannot with reasonable diligence be found in this State, they shall be deemed sufficiently served by publication of the notice once a week for two successive weeks in some newspaper published in the county or city where the action is brought, or if none is published therein, then in some newspaper having general circulation therein, and a notice of pending forfeiture shall be sent by registered mail to the last known address of the owner or lien holder.

Comments - Notice of seizure provision (first paragraph) is new and patterned after a similar provision in the proposed model act. It requires some official written filing for all seizures for forfeiture. The notice of pending forfeiture (second paragraph) is simply a new name for the notice provision of §19.2-376 and §4-56(d).

§19.2-386.4 Handling of seized property. -- Any agency seizing property under §18.2-249 or under §19.2-386.2, pending forfeiture and final disposition, may do any of the following:

- (i) Place the property under constructive seizure by posting notice of seizure for forfeiture on the property or by filing notice of seizure for forfeiture or notice of pending forfeiture in any appropriate public record relating to the property;
- (ii) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest bearing account;
- (iii) Remove the property to a place designated by the circuit court in the county or city wherein the property was seized;
- (iv) Provide for another custodian or agency to take custody of the property and remove it to an appropriate location within the jurisdiction of the circuit court in the county or city wherein the property was seized or in which the complaint was filed.

Comments - This is a new provision and is patterned after a section of the proposed model act. It is designed to protect all parties and the property, and allow consolidation of multi-jurisdictional seizures.

§19.2-386.5 Release of seized property. -- At anytime prior to the filing of a complaint, the attorney for the Commonwealth in the county or city in which the property has been seized pursuant to §18.2-249 may, in his discretion, upon the payment of costs incident to the custody of the seized property, return the seized property to an owner or lien holder, without requiring that the owner or lien holder post bond as provided in §19.2-386.6, if he believes the property is properly exempt from forfeiture pursuant to §19.2-386.8.

Comments - This is a new provision patterned after a section of the proposed model act. This allows the Commonwealth's Attorney to release the property without going through the adjudicative process when he feels release is appropriate.

§19.2-386.6 Bond to secure possession. -- If the owner or lien holder of the named property desires to obtain possession thereof before the hearing on the complaint filed against the same, such property shall be appraised by the clerk of the court where such information is filed. The clerk shall promptly cause the property to be appraised at its fair cash value, and forthwith make return thereof in writing to the court. Any appraisal fee shall be taxed as costs as provided in §19.2-386.12. Upon the return of the appraisal, the owner or lien holder may give a bond payable to the Commonwealth, in a penalty of the amount equal to the appraised value of the property plus the court costs which may accrue, with security to be approved by the clerk and conditioned for the performance of the final judgment of the court, on the trial of the complaint. A further condition shall be that, if upon the hearing on the complaint, the judgment of the court is that such property, or any part thereof, or such interest and equity as the owner or lien holder may have therein, is forfeited, judgment may thereupon be entered against the obligors on such bond for the penalty thereof, without further or other proceedings against them thereon, to be discharged by the payment of the appraised value of the property so seized

and forfeited and costs. Upon such judgment, execution may issue, on which the clerk shall endorse, "no security to be taken." Upon giving of the bond, the property shall be delivered to the owner or lien holder.

Comments - This is taken from §19.2-377 and §4-56(e).

§19.2-386.7 Sale of property liable to deterioration. -- If the property seized is perishable or liable to deterioration, decay, or injury by being detained in custody pending the proceedings, the circuit court for the county or city in which the complaint is filed or in which the property is located, may order the same to be sold upon such notice as the court in its discretion may deem proper and hold the proceeds of sale pending the final disposition of such proceedings.

Comments - This is taken from §19.2-378.

§19.2-386.8 Exemptions. -- The following exemptions shall apply to property otherwise subject to forfeiture under §18.2-249:

- (1) No conveyance used by any person as a lawfully certified common carrier in the transaction of business as a common carrier may be forfeited under the provisions of this section unless the Commonwealth establishes that the owner of the conveyance was a consenting party or privy to the conduct giving rise to forfeiture or knew or had reason to know of it.
- (2) No conveyance may be forfeited under the provisions of this section for any conduct which the court finds to have been committed by a person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of Virginia or any other state.
- (3) No owner's or lien holder's interest may be forfeited under this section if the court finds all of the following:
 - (i) He acquired the interest before or during the conduct giving rise to forfeiture;

(ii) He did not convey legal or equitable authority to transfer the interest to any person whose conduct gives rise to forfeiture, and he was not married to any such person or if married to such person, held the property as separate property; and

(iii) He did not know and could not reasonably have known of the conduct giving rise to forfeiture.

(4) No owner's or lien holder's interest may be forfeited under this section if the court finds all of the following:

(i) He acquired the interest after the conduct giving rise to forfeiture;

(ii) He is a bona fide purchaser for value not knowingly taking part in an illegal transaction; and

(iii) He was at the time of acquisition of the interest reasonably without notice of the conduct giving rise to the forfeiture and reasonably without cause to believe that the property was subject to forfeiture.

In such event the Commonwealth shall have a right of action against the seller of the property for the proceeds of the sale.

Comments - This provision is new, but consistent with the policy established in §4-56(h) and (i) and §19.2-379.

§19.2-386.9 Appearance by owner or lien holder. -- Any person claiming to be an owner or lien holder of the named property, may appear at any time before final judgment of the trial court and be made a party defendant to the complaint. Such appearance shall be done by answer, under oath, which shall clearly set forth (i) the nature of the defendants' claim; (ii) the exact right, title or character of the ownership or interest in the property and the evidence thereof; and (iii) the reason, cause, exemption or defense he may have against the forfeiture of the property.

Comments - This is taken from §19.2-379 and §4-56(f).

§19.2-386.10 Trial of issues of fact. -- A. When the case is ready for trial, such issues of fact as are made by the pleadings, or as the court may direct, shall be tried by a jury, unless a trial by jury is waived by consent of the parties, in which case, the court may determine the whole matter of law and fact. At trial, the Commonwealth has the burden of proving that the property is subject to forfeiture under §18.2-249. Upon such a showing by the Commonwealth, the claimant has the burden of proving that the claimant's interest in the property is exempt under §19.2-386.8. The proof of all issues shall be by a preponderance of the evidence.

B. The complaint and trial thereon shall be independent of any criminal proceeding against any claimant or other person for violation of law. However, upon motion and for good cause shown, the court may stay a forfeiture proceeding that is related to an indictment or information alleging a violation of §18.2-248 or §18.2-248.1.

Comments - The first sentence is taken from §19.2-380 and §4-56(g). The last part of the first paragraph is new, but merely sets out what the provisions of Title 4 and Title 19.2 have established. The first sentence of the second paragraph relating to independence from criminal prosecutions is taken from §19.2-379. The last sentence is new language which is taken from the proposed model act and gives the court discretion to order a stay pending a related criminal prosecution.

§19.2-386.11 Judgment of condemnation and sale of property. -- A. If the forfeiture is established, the judgment shall be that the property be condemned as forfeited to the Commonwealth and further that the same be sold, unless a sale thereof has been already made under §19.2-386.7 or unless the court shall determine that the property forfeited is of such minimal value that the sale thereof would not be in the best interest of the Commonwealth. If sale has been made, the judgment shall be against the proceeds of such sale. If the property condemned has been delivered to the claimant under §19.2-386.6, such further judgment shall be against the obligors in the bond for the penalty thereof to be discharged by the payment of the appraised value of the property, upon which judgment, process of execution shall be awarded and the clerk shall endorse thereon, "No security is to be taken."

B. Forfeited cash and negotiable instruments shall be disposed of pursuant to the provisions of §19.2-386.12.

C. Contraband, the sale or possession of which is unlawful, and property not sold because of the minimal value thereof, may be ordered destroyed by the court.

D. Notwithstanding any other provisions of law, the agency seizing any motor vehicle, boat or aircraft may, after order of forfeiture, petition the court for authorization to use and operate such motor vehicle, boat or aircraft for the investigation of narcotics and controlled substances in this Commonwealth by the agency seizing the motor vehicle, boat or aircraft. Upon finding that the agency has a law-enforcement need to use the motor vehicle, boat or aircraft for such purpose, the court may permit such use by the agency for a period of time deemed appropriate by the court. When the agency ceases to use the motor vehicle, boat or aircraft, such motor vehicle, boat or aircraft shall be disposed of pursuant to this section. The agency using or operating each such motor vehicle, boat or aircraft shall have insurance on each vehicle used or operated for liability and property damage in at least the minimum amounts stipulated under §46.1-504 for motor vehicles or subdivision A1 of §5.1-88.2 for aircraft. If such insurance coverage is not provided, the governmental unit, whether state or local, of which such agency is a part shall be liable for any liability incurred up to these minimum amounts.

Comments - The first three paragraphs are taken from §19.2-381 and §4-56(j). The last paragraph is taken from §18.2-249C.

§19.2-386.12 Sale of forfeited property. -- A. Any sale of forfeited property shall be made for cash, after due advertisement, and shall vest in the purchaser a clear and absolute title to the property sold. The proceeds of sale, and whatever may be realized on any bond given under §19.2-386.6, and any money forfeited, shall be disposed of by the court according to the rights of the parties and the provisions of the laws of the Commonwealth.

B. In all cases of forfeiture under this section, the actual expenses incident to the custody and preservation of the seized property prior to forfeiture, and the expenses incident to the sale thereof, including commissions, shall be taxed as costs and shall be paid to the person or persons who incurred these costs out of the net proceeds from the sale of such property. The residue, if any, shall be disbursed according to law. The party or parties in interest to any forfeiture proceeding commenced under this section shall be entitled to reasonable attorney's fees and costs if the forfeiture proceeding is terminated in favor of such party or parties. Such fees and costs shall be paid by the Commonwealth from the Criminal Fund.

Comments - The provisions of the first paragraph are taken from §§19.2-382 and 383. The second paragraph is taken from §18.2-249D.

§19.2-386.13 Writ of error and supersedeas. -- For the purpose of review on a writ of error or supersedeas, a final judgment or order in the cause shall be deemed a final judgment or order in a civil case (not in chancery) within the meaning of §8.01-670.

Comments - This is taken from §19.2-385.

Proposed Statutory Amendment

§58.1-3127.1. Treasurer to collect all amounts to be received by any department or agency of political subdivision.- All amounts to be received or expended by any department or agency, or department or agency head, of a political subdivision of the Commonwealth by virtue of federal grant, gift, or forfeiture or other disposition of federal funds shall be made payable to the treasury or treasurer of the political subdivision and shall not be made payable to such department or agency, or department or agency head. Accounting and disbursement provisions of §58.1-3127 shall apply to such amounts.

"Proposed Amendment to §52-4 3."

§52-4.3. Drug Investigation Special Trust Account. - (a) There is hereby created in the Department of the Treasury a special nonreverting fund to be known as the Drug Investigation Special Trust Account, consisting of such funds as may be appropriated by the General Assembly from time to time and all interest, dividends and appreciation, including payments to the fund from the federal government by virtue of grant, gift, forfeiture, or other disposition, which may accrue to such fund, for the purpose of providing a timely supplemental source of money to the Department of State Police for use in the detection, investigation and apprehension of persons for the violation of the laws pertaining to the manufacture, sale or distribution of illegal drugs

(b) Funds from the Drug Investigation Special Trust Account shall be used to supplement general appropriations for the Department of State Police Bureau of Criminal Investigations for nonpersonal service expenditures related to illegal drug investigations. They shall be used only for the purposes stated in subsection (a) above and in strict conformity with the rules and regulations promulgated by the Superintendent of State Police to carry out the intent and purposes of this section.

(c) No expenditures shall be made from the Drug Investigation Trust Account except in strict compliance with procedures established by the Superintendent of State Police and approved by the State Comptroller. The accounting for all such expenditures shall also be in strict compliance with such procedures.

(d) The Drug Investigation Special Trust Account shall be established on the books of the Comptroller so as to segregate the amounts appropriated to the account and the amounts earned or accumulated by such special trust account. No portion of such special trust account shall be used for a purpose other than for drug investigations. Funds remaining in the Drug Investigation Special Trust Account at the end of a biennium shall not revert to the general fund but shall remain in the special trust account, to be used for the purposes set forth in subsections (a) through (c) and shall accumulate interest and dividends throughout the existence of the special trust account. Any funds, however, remaining in the special trust account at the end of a biennium in excess of \$1,500,000 shall revert to the general fund.

