

National District Attorneys Association Guidelines for Civil Asset Forfeiture (1992)

Crime in America is a multi-billion dollar industry that has a devastating effect on legitimate economic enterprise by diverting money from lawful commerce while rewarding and financing ongoing illegal activity. Asset forfeiture destroys the money base necessary for the continuation of illegal enterprises and attacks the economic incentive to engage in to facilitate criminal activity. Asset forfeiture programs then rededicate the money from illegal activity to the public good. The National District Attorneys Association strongly believes that law enforcement agencies and prosecutors should aggressively pursue forfeiture actions to eliminate the instrumentalities of crime and to confiscate the proceeds from criminal acts. To encourage such efforts it is important that forfeiture laws continue to allow most of the proceeds from forfeiture to be returned to the law enforcement community responsible for initiating these actions to be used to further their law enforcement efforts. These guidelines are designed to assist in the exercise of prosecutorial discretion in administering and enforcing statutory forfeiture programs.

Goals

- 1. The removal of unlawfully obtained proceeds of criminal activity and the elimination of the instrumentalities used to commit crimes are the principal goals of asset forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation of prosecution of criminal offenses.**

Comment: This guideline applies when the forfeiture occurs in a civil context aimed at remedial economic objectives. Law enforcement's ability to protect the community is enhanced by remedying the effects of criminal activity and reducing the incentive for that activity.

General Standards

- 2. Where multiple agencies in a geographic region have jurisdiction to pursue asset forfeiture every effort should be made to cooperate to advance the public interest.**

Comment: Choice of forum for asset forfeiture should be governed by a law enforcement goals of asset forfeiture. Federal "adoption" of local forfeitures provides an important additional capacity to local law enforcement when state legislatures have failed to enact effective statutes or state and local prosecution resources are not available to pursue forfeiture opportunities. In other areas, effective state statutes are in place and state and local prosecutors have allocated sufficient resources to respond to the needs of local law enforcement. The prosecutor should ensure the equitable distribution of any forfeited property or proceeds to the appropriate agencies. The distribution should generally reflect the contribution of any agency's participation in any of the activity that led to the seizure or forfeiture of an asset. Agencies should strive to achieve agreement on the law enforcement goals within a region in order to promote effective and efficient asset forfeiture strategies.

- 3. Every government entity with the authority to seize property should ensure that its asset forfeiture program provides for:**

- a. prompt prosecutorial review of the circumstances, and propriety of the seizure;**

- b. timely notice of seizure to interest holders of seized property; and**
- c. expeditious resolution of ownership claims and a rapid release of property to those entitled to the return of the property.**

Comment: Asset forfeiture is a powerful tool. Each agency should establish internal procedures to promote fairness, accountability, and awareness of policy, legal and other considerations.

Procedures

- 4. Absent exigent circumstances, a judicial order is advisable for all seizures of real property. When real property in residential use is sought to be forfeited, the least intrusive means that will preserve the property for forfeiture and protect the public should be employed. A notice of lis pendens or an order restraining alienation should suffice to preserve the government's interest in forfeiture pending final judicial determination of the forfeiture action.**

Comment: In real property forfeitures the use of judicial orders enhances public confidence in the forfeiture process and insulates seizing officers from allegations of improper conduct. This policy recognizes that immediate dispossession from a residence may affect innocent individuals and that dispossession is not always required to preserve real property for forfeiture while providing for exigencies wherein the public is in immediate danger. Many street level enforcement seizures will necessarily present circumstances which preclude officers from obtaining pre-seizure judicial orders.

- 5. Every entity retaining forfeited property for official law enforcement use should ensure that the property is subject to controls consistent with those applicable to property acquired through the normal appropriations process.**

Comment: Forfeited properties should be used in a fiscally responsible manner and should be subject to the same controls applicable to other agency property, e.g., if officials are not entitled to use agency vehicle for such travel.

- 6. No seized property should be used without judicial authorization and/or supervision. A use order may be obtained from the court in appropriate circumstances, otherwise the property should not be used unless the forfeiture action has been completed and title to the property has vested in the receiving agency. Forfeited property not used in an undercover capacity should be sold or added to the regular inventory of the agency. All property should be used and disposed of in a manner consistent with the use and disposition of similar property by that agency.**

- 7. The disposition of forfeited property retained by the law enforcement agency should not be determined by any person who directly supervised or exercised discretion in its forfeiture.**

Comment: Assignment of property for use by law enforcement saves tax dollars that would otherwise have been necessary to purchase that property. However, public confidence and support require that the possibility that discretionary decisions may be influenced by the prospect of personal gain or enjoyment be avoided.

- 8. Forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.**

Comment: Public confidence in asset forfeiture requires that officials properly manage and account for the proceeds of an asset forfeiture program. Forfeiture proceeds should be audited and controlled to prevent waste, fraud, and abuse. Every transaction into or out of the fund should be documented and records maintained for regular audit. This practice will also protect against the diversion of forfeiture proceeds to non-law enforcement purposes.

- 9. Every seizing agency should maintain seized property to preserve its value for successful claimants as well as the taxpayers.**

Comment: Seizure of property gives rise to a duty to care for the property, whether the ultimate beneficiary is a successful claimant or the government. Seizing agencies should arrange for proper maintenance and sale of all assets, and should pursue management strategies that reduce the amount of time that property spends in inactive storage. Such strategies could include bond-out provisions, “substitute res” orders, custodianship arrangements, interlocutory sales, and other similar measures.

- 10. To the extent possible, civil forfeiture actions should be initiated as independent cases which are not controlled or influenced by the criminal prosecution. Prosecutors should avoid plea agreements in a criminal case which involve agreements to dismiss forfeiture proceedings. The converse is also true. Prosecutors should avoid settlements in a forfeiture case which involve concessions in a criminal proceeding.**

- 11. Every prosecutor should establish procedures to ensure expeditious resolution of ownership claims if challenges to the asset forfeiture proceeding are made and timely return of the property to the known owner or interest holders if the forfeiture action is dismissed or is unsuccessful.**

- 12. Salaries and personal benefits of any person influencing or controlling the selection, investigation, or prosecution of forfeiture cases must be managed in such a way that employment or salary does not depend upon the level of seizures or forfeitures in which they participate.**

Comment: Personal performance standards should not be based upon dollar amounts of seizures. Salaries and benefits of personal involved in the exercise of discretion in forfeiture cases are managed in many different ways, involving various federal, state, local grant, task force and contract mechanisms.

- 13. Agency employees and their families should be prohibited from purchasing forfeited property directly or indirectly from the agency, or any property forfeited by any other agency, if the employee participated in any aspect of the investigation or litigation involving that property.**

Comment: Whenever any employee of a forfeiting agency purchases property forfeited by that agency, the agency is open to charges that the employee possessed inside information that placed them in an unfair position in comparison with other bidders.

- 14. Agencies receiving forfeiture funds should make annual budget requests based on agency funding needs without regard for anticipated or projected asset forfeiture revenues.**

Comment: Taxpayers benefit when forfeited property can be placed into official use, thus reducing tax dollars spent on law enforcement equipment. Forfeited property retained for law enforcement should not be used to supplant the budget of that agency. By adding resources to law enforcement, greater resources are available to investigate and prosecute targeted criminal offenses. This ultimately benefits the public through increased law enforcement. Budgeting decisions based on anticipated forfeiture revenues subject the budgetary process to unhealthy pressure and unpredictability.

- 15. Prosecutors should pursue forfeiture actions to further the remedial goals set forth above. A prosecutor should not consider any personal or political advantages or disadvantages or gains or losses that the initiation of a forfeiture action may bring to the prosecutor's office in deciding whether to initiate or dismiss a forfeiture proceeding. Nor should a prosecutor improperly consider the race, gender, social, or economic status of any person in deciding whether to initiate or dismiss a forfeiture proceeding. This guideline should not be read to preclude the initiation of forfeiture proceedings, which contribute to the fulfillment of the official mission of the prosecutor's office.**