

Virginia State Crime Commission

Asset Forfeiture

2015

Asset Forfeiture

Executive Summary

Senate Bill 684, patroned by Senator Charles Carrico, and House Bill 1287, patroned by Delegate Mark Cole, were introduced during the Regular Session of the 2015 General Assembly. Both bills were identical as introduced; however, House Bill 1287 was slightly amended in the House Courts of Justice Committee. Both bills would have required that any forfeiture actions related to criminal activity (pursuant to Va. Code § 19.2-386.1 *et seq.*) be stayed until there had been a criminal conviction for a qualifying offense, and the exhaustion of all appeals. If no judgment of conviction for a qualifying offense was entered, the seized property would then be released. The amended version of House Bill 1287 provided two exceptions, which permitted an action of forfeiture to proceed even though no final judgement of conviction had been entered. Those exceptions applied when: (i) the forfeiture was ordered by a court pursuant to a lawful plea agreement; or (ii) the owner of the property did not submit a written demand for return of the property within one year from the date of seizure, in which case the forfeiture case could proceed.

Both bills were passed by in the Senate Finance Committee and a letter was sent to the Crime Commission requesting that the subject matter of the bills be reviewed. While the bills' foci were somewhat narrow in scope, the Executive Committee of the Crime Commission authorized a broad review of asset forfeiture in Virginia. Crime Commission staff undertook a number of activities to thoroughly examine the topic, including: a review of Virginia and other states' statutes, collection of relevant data and literature, a survey of all law enforcement agencies and Commonwealth's Attorneys' Offices, a review of law enforcement agencies' policies/general orders pertaining to asset forfeiture, and numerous meetings with involved agencies, organizations and individuals.

For purposes of this study, asset forfeiture can be defined as a civil lawsuit, initiated by the government, to seize the instrumentalities and profits of criminal activity. Broadly speaking, forfeiture of assets related to criminal activity serves a number of public policy goals, such as removing contraband and dangerous items from the public, recompensing the government for lost income, recompensing the government for the expenses of a criminal prosecution and investigation, preventing unjust enrichment by criminals, helping directly fund law enforcement efforts to keep society safe, and thwarting and deterring criminal activity.

Overall, staff found that Virginia's current statutes and practices balance the interests of property owners and the Commonwealth. While additional protections for citizens could be implemented in Virginia, no direct evidence was found of systemic abuse of the asset forfeiture process by law enforcement or prosecutors under Virginia's asset forfeiture laws.

The statutory forfeiture scheme in Virginia is substantially similar to most of the other states and the federal government. A majority of the states and the federal government are analogous to Virginia in the following ways: a criminal conviction is not required as a prerequisite to forfeiture, the burden of proof required to establish forfeiture is preponderance of the evidence or a similar evidentiary standard, and the claimant bears the burden of proving an "innocent owner" exception after the government has proven the property is subject to forfeiture. The main distinction

between Virginia and other jurisdictions is that Virginia is in the minority of jurisdictions that mandate reimbursement of attorney fees to a claimant that prevails in a forfeiture proceeding.

In Virginia, law enforcement and prosecutors can participate in the Virginia Department of Criminal Justice Services' (DCJS) Forfeited Asset Sharing Program, the federal Department of Justice's Asset Forfeiture Program, the federal Treasury Forfeiture Fund managed by the U.S. Department of the Treasury, or all three programs. Most, however, participate in the state program only. In Fiscal Year 2014 (FY14), Virginia received a combined total of approximately \$10.8 million in disbursements from the U.S. Department of Justice and state asset forfeiture programs. Specifically, \$6,641,267 was disbursed from the federal program and \$4,185,594 was disbursed from the state program (as of September 8, 2015). The total number of agencies participating and the amount of monies disbursed has remained fairly consistent over the past five years from these two asset forfeiture programs. Virginia also receives disbursements from the Treasury Forfeiture Fund managed by the U.S. Department of the Treasury; however, an anomaly exists in the amount disbursed during recent years due to the Abbott Laboratories settlement where Virginia was awarded over \$115 million. Disbursements for this settlement have been distributed over the course of FY13-FY16, rather than in one lump sum. The Abbott settlement accounts for the vast majority of disbursements received from the Fund during this time frame, representing an anomaly to totals typically received in prior years.

Staff focused the majority of their analysis on data from Virginia's Forfeited Asset Sharing Program. It was found that excellent data is maintained for this program. Since 1991, DCJS has managed the tracking and reimbursement of all state drug-related forfeitures valued at \$500 or more. All proceeds from state non-drug related forfeitures, which are not tracked by DCJS, are sent directly to the Literary Fund by law enforcement agencies. Non-drug related forfeitures include offenses relating to child pornography, cigarette trafficking, computer crimes, felony DUI's, gambling, money laundering, moonshining/bootlegging, prostitution and transportation of stolen goods.

The Department of Criminal Justice Services has distributed over \$106 million dollars to Virginia's law enforcement and Commonwealth's Attorneys' Offices since 1991. In general (for drug-related cases), DCJS retains 10% of the proceeds from each forfeited item. The remaining proceeds are distributed based on sharing agreements between law enforcement and Commonwealth's Attorneys' Offices. Staff found that since 2010, the value of items seized, as well as the total amounts disbursed, has remained stable with approximately \$10 to \$11 million in items seized and \$4 to \$5 million disbursed back to agencies each year. Most seizures involve currency and vehicles. Examining case dispositions, staff found that approximately 75% resulted in forfeiture and 25% resulted in the item being returned to the owner or a lienholder. Taking a closer look at cases resulting in forfeiture, staff found that most asset forfeitures are a result of default judgement or some type of plea agreement or settlement. Very few cases appear to go to trial. Participating agencies in the state forfeiture program are held accountable through detailed annual certification reports to DCJS. Further, nearly all participating agencies reported having annual audits conducted internally, by DCJS, or by other independent entities.

There were, however, some data limitations identified by staff. Unlike data for drug-related asset forfeitures, non-drug related forfeiture data is not captured in a reliable, transparent manner. Nor is data readily captured to connect any related criminal charges and convictions with civil forfeiture proceedings. Data is also not readily available to ascertain how many civil asset forfeiture trials involve a verdict in favor of the defendant. Staff accordingly made recommendations to help close this gap in available data.

Staff surveyed all Virginia law enforcement agencies and Commonwealth's Attorneys. There was a high response rate with 87% (118 of 135) of primary law enforcement and 83% (99 of 120) of Commonwealth's Attorneys responding. All survey respondents indicated that they participated in state asset forfeiture proceedings. The majority of survey respondents reported that they had a designated person(s) to handle these types of cases for their agency or office. The most common type of crimes involved in asset forfeiture cases, according to all survey respondents, were felony drug offenses. Responding prosecutors reported that 90% or more of the informations they filed in FY14 were for drug-related cases. However, both prosecutors and law enforcement also reported handling other eligible offenses relating to child pornography, cigarette trafficking, computer crimes, felony DUIs, gambling, money laundering, moonshining/bootlegging, prostitution and transportation of stolen goods. Survey respondents were also asked to designate their level of support or opposition for the following three proposed options: (1) Requirement to stay a civil asset forfeiture case until any related criminal charges are resolved; (2) Requirement for a criminal charge before the related civil asset forfeiture case can proceed; and, (3) Requirement for a criminal conviction before the related civil asset forfeiture case can proceed. The level of support from law enforcement and prosecutors was very mixed for the first two proposed options. However, there was strong opposition by both law enforcement and prosecutors to require a criminal conviction before the related civil asset forfeiture case could proceed.

The Crime Commission reviewed study findings at its October meeting and directed staff to draft legislation for several key issues, as well as provide a list of additional policy options to consider relating to the requirement of a criminal conviction prior to a civil forfeiture proceeding, burden of proof levels, and stays in relation to forfeiture proceedings.

There were seven staff recommendations presented for the Crime Commission's consideration at its December meeting. Staff recommendations, which were based upon the key findings of the study, focused on transparency of the forfeiture process in Virginia, preventing potential for abuses, as well as automation and efficiencies. The Crime Commission unanimously endorsed all seven staff recommendations at its December meeting:

Recommendation 1: The use of "waivers" by law enforcement, whereby the declared owners or lawful possessors of property "waive" their rights to contest forfeiture, should be prohibited.

Recommendation 2: The Virginia Department of Criminal Justice Services should be required to prepare an annual report to the Governor and General Assembly regarding information on all drug and non-drug asset seizures and forfeitures.

Recommendation 3: The word "warrant" should be added to Va. Code § 19.2-386.10(B), so that a forfeiture proceeding may be stayed if it is also related to a warrant.

Recommendation 4: The Virginia Department of Criminal Justice Services should require participating agencies to submit information on all state law enforcement seizures and state forfeiture actions *stemming from any criminal activity*, not just those related to drug offenses.

Recommendation 5: The Virginia Department of Criminal Justice Services should collect additional data related to asset forfeitures for criminal charges and convictions that may accompany drug and non-drug related civil asset forfeitures.

Recommendation 6: The Virginia Department of Criminal Justice Services should consider further automating Virginia’s Forfeited Asset Sharing Program so participating agencies have the ability to upload all forms, annual certification reports, and supporting documentation. It was also recommended that Commonwealth’s Attorneys be permitted to notify the Commissioner of the Va. Department of Motor Vehicles electronically, as opposed to using certified mail, which is the current requirement, whenever a vehicle has been seized in anticipation of a forfeiture proceeding per Va. Code § 19.2-386.2:1.

Recommendation 7: Crime Commission staff should work with law enforcement and prosecutors to help implement training that can be readily accessible online to new asset forfeiture coordinators.

Recommendations 1, 2, 3, and a portion of Recommendation 6 were combined into an omnibus bill. Specifically, the omnibus bill prohibits law enforcement from requesting a “waiver” until after an information is filed, permits electronic notification to the Virginia Department of Motor Vehicles (DMV) of seized vehicles, removes the requirement that DMV certify to the Commonwealth’s Attorney the amount of any lien on a vehicle, allows for the stay of a civil forfeiture proceeding related to a warrant, and requires that DCJS prepare an annual report to the Governor and General Assembly that details all funds forfeited to the Commonwealth as a result of civil asset forfeiture proceedings. The bill does not represent an overhaul of the asset forfeiture process in Virginia, but rather improvements to the functionality and transparency of the present system. The omnibus bill was introduced during the 2016 Regular Session of the Virginia General Assembly in both the Virginia Senate and House of Delegates: Senators Janet Howell and Thomas Norment introduced Senate Bill 423 and Delegate C. Todd Gilbert introduced House Bill 771. Both bills passed the legislature, and were signed into law by the governor; House Bill 771 was signed on March 1, 2016, and Senate Bill 423 was signed on March 11, 2016.

Recommendations 4 and 5 were handled via a letter request from the Crime Commission to DCJS. In response, DCJS indicated that they would request that agencies include information on non-drug asset seizures and forfeitures in their annual reports filed with the agency and that they would modify reporting documents to request information about criminal charges and convictions related to all forfeiture cases. Recommendation 6 was handled by both a letter request to DCJS and a legislative component to address changes to Va. Code § 19.2-386.2:1. This legislative component was included in the two omnibus bills, discussed above, that were signed into law by the governor. Staff will ensure that Recommendation 7 is implemented by meeting with all involved parties in 2016.

There were five policy options presented for the Crime Commission’s consideration at its December meeting. None of the Policy Options were endorsed by the Crime Commission; motions for Policy Options 1, 2, and 3 failed to pass and no motions were made for Policy Options 4 or 5.

Policy Option 1: Should criminal convictions be required, and the conclusion of all appeals, before any civil forfeiture could be ordered? Should additional exceptions be included to what was proposed in SB 684/HB 1287?

Policy Option 2: Should a criminal conviction be required before any civil forfeiture could be ordered?

Policy Option 3: Should the burden of proof on the Commonwealth be increased from “preponderance of the evidence” to “clear and convincing evidence”?

Policy Option 4: Should defendants be entitled to have forfeiture proceedings heard prior to the resolution of any related pending criminal cases, even if the Commonwealth wants to stay the forfeiture cases?

Policy Option 5: Should defendants be entitled to a mandatory stay until the resolution of any related pending criminal cases?

Background

Senate Bill 684, patroned by Senator Charles Carrico, and House Bill 1287, patroned by Delegate Mark Cole, were introduced during the Regular Session of the 2015 General Assembly. Both bills were identical as introduced; however, House Bill 1287 was slightly amended in the House Courts of Justice Committee. Both bills would have required that any forfeiture actions related to criminal activity (pursuant to Va. Code § 19.2-386.1 et seq.) be stayed until there had been a criminal conviction for a qualifying offense and all appeals had been exhausted. If no judgment of conviction for a qualifying offense was entered, the seized property would then be released. The amended version of House Bill 1287 provided two exceptions, which permitted an action of forfeiture to proceed even though no final judgement of conviction had been entered. Those exceptions applied when: (i) the forfeiture was ordered by a court pursuant to a lawful plea agreement; or (ii) the owner of the property did not submit a written demand for return of the property within one year from the date of seizure, in which case the forfeiture case could proceed.

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For purposes of this study, asset forfeiture can be defined as a civil lawsuit, initiated by the government, to seize the instrumentalities and profits of criminal activity. Broadly speaking, forfeiture of assets related to criminal activity serves a number of public policy goals, such as removing contraband and dangerous items from the public, recompensing the government for lost income, recompensing the government for the expenses of a criminal prosecution and investigation, preventing unjust enrichment by criminals, helping directly fund law enforcement efforts to keep society safe, and thwarting and deterring criminal activity.

There are early legal precedents for this type of action. In Colonial times, smuggled goods could be seized and sold to ensure applicable customs duties were received by the government. This was separate from any criminal action against individuals who were involved in the smuggling. At an early date, forfeiture also became a tool used to combat and deter criminal activity, as evidenced by this 19th century Virginia statute:

“All monies actually staked or betted whatsoever, shall be liable to seizure...under a warrant from a magistrate...and be paid into the treasury of the Commonwealth, for the use and benefit of the literary fund, deducting thereout fifty percent upon all monies seized, to be paid to the person or persons making the said seizure.”¹

Forfeiture became more prominent during Prohibition, and then expanded dramatically once again in the 1970’s and 1980’s, as governments across the country sought ways to combat the enormous profits generated by the sales of drugs.² Deterring and combatting ongoing criminal activity is especially relevant when dealing with an organized criminal enterprise, such as the distribution of drugs. Directly funding law enforcement efforts is also especially important when it comes to combatting organized criminal enterprises. Law enforcement must handle the logistics, lengthy investigations and criminals who might have enormous resources at their disposal. For instance, law enforcement may need to pay for confidential informants, set up controlled buys, create fictitious businesses and transaction sites, as well as purchase and maintain expensive surveillance equipment.

On the other hand, direct funding of law enforcement through asset forfeiture can lead to inappropriate seizures and purchases if not properly overseen or monitored. Recently, there have been numerous stories in the press highlighting instances where cash or property was seized by law enforcement in a manner that indicates abuse of the system.³ Many of these egregious cases occurred in other states. Although some cases did take place in Virginia, they appear to have been handled via the federal asset forfeiture program, rather than Virginia’s state asset forfeiture program.

Until 1991, the Virginia Constitution required that all forfeited property accrued by the Commonwealth, as well as fines for offenses committed against the Commonwealth, be paid into the Literary Fund, which is used to fund Virginia schools.⁴ Over the past five years, the net revenue of the Literary Fund from all sources has remained stable as seen in Table 1.

Table 1: Virginia Literary Fund Net Revenue, FY11-FY15

FY	Total Literary Fund Revenue
2011	\$ 89,465,124
2012	\$ 89,668,006
2013	\$ 91,973,522
2014	\$ 86,144,047
2015	\$ 89,108,012

Source: Va. Department of Accounts, Literary Fund Data, CARS System.

There are numerous funding streams into the Literary Fund in addition to proceeds from the forfeiture of items connected to non-drug criminal offenses, including proceeds from unclaimed lottery prizes, “fines/penalties/forfeited recognizances”, as well as interest stemming from fines, forfeitures and other sources. Proceeds from the forfeiture of items connected to non-drug related

criminal offenses are included within the “forfeited/confiscated property and funds” category seen highlighted in Table 2. Unfortunately, the data was unable to be broken down to determine exactly how much of the \$339,964 was from non-drug related forfeitures versus other types of forfeited or confiscated property and funds.

Table 2: Net Revenue from Individual Literary Fund Source, FY15

Literary Fund Source	FY15 Net Revenue
Fines, Penalties & Forfeited Recognizances	\$60,598,703
Proceeds from Unclaimed Lottery Prizes	\$12,421,426
Interest on Fines and Forfeitures	\$6,633,262
Interest on Literary Loans	\$4,275,160
Fines Imposed by the State Corporation Commission	\$2,912,604
Interest from Other Sources	\$1,657,132
Regulatory Board Monetary Penalty & Late Fees	\$525,818
Forfeited/Confiscated Property and Funds	\$339,964
Fines, Fort, Court Fees, Costs, Penalties & Escheat	\$2,000
Criminal History Fee	\$32
Private Donations, Gifts & Grants	\$10
Pay to Circuit Court for Commissions	-\$212,113
Refund- Misc. Disbursements Made Prior Years	-\$45,586
Property Escheated by Appointed Escheater	-\$400
TOTAL	\$89,108,012

Source: Va. Department of Accounts, Literary Fund Data, CARS System.

A very significant change to how funds from forfeited property were handled occurred in 1991. The Constitution of Virginia was amended to permit the General Assembly to allow for “the proceeds from the sale of all property seized and forfeited to the Commonwealth for a violation of the criminal laws... proscribing the manufacture, sale, or distribution of a controlled substance or marijuana” to “be distributed by law for the purpose of promoting law enforcement.” Therefore, current law designates proceeds from the forfeiture of items connected to drug-related criminal offenses go to purposes of promoting law enforcement; whereas, forfeiture of items connected to non-drug criminal offenses still go to the Literary Fund.

Legal Overview

Constitutional Law Background

Although the due process requirements for asset forfeitures are less than what exist for criminal trials, certain constitutional safeguards must still be observed. The Eighth Amendment does apply, and in theory, would prohibit an excessive forfeiture for minor wrongdoing.⁵ In practice, however, forfeitures are almost never found to have violated the Eighth Amendment.

Because asset forfeiture involves the seizure of an individual's property, there are additional limitations placed on the government's actions. The Fourth Amendment does apply to forfeiture proceedings, so no seizures can be made that are unreasonable.⁶ In general, a probable cause standard, or something beyond mere suspicion, must be used.

The Fifth Amendment's due process requirements also apply to forfeitures.⁷ In general, there must be prior notice and the opportunity for a hearing prior to the order of forfeiture being entered by a court. This is similar to the Virginia Supreme Court's holding that the statutory requirements of Va. Code § 19.2-386.3 are mandatory and jurisdictional, such that failure to file an information within 90 days of seizure must result in the release of the property.⁸

However, as noted, due process requirements are less stringent than in a criminal case. For example, there is no requirement that an "innocent owner" defense be granted to the co-owner of an automobile that is forfeited, and no requirement that the innocent owner be granted compensation from the state.⁹ Similarly, failure to file a notice of seizure within 21 days, as required by Va. Code § 19.2-386.3, is not jurisdictional, and will not prevent the forfeiture.¹⁰ Unlike the filing of the information, the filing of the notice is "directory and not mandatory," and does not define any basic rights.¹¹

Virginia Law and Criminal Related Asset Forfeitures

In Virginia, there are various means of accruing forfeited property to include criminal drug and non-drug related forfeitures, bail bondsman forfeitures, peace bonds, appeal bonds, debtor's bonds/forthcoming bonds,¹² as well as various forfeitures relating to permit holders (mine, junkyard, waterworks operators, etc.). However, this report will focus solely upon forfeitures related to criminal activity.

The Virginia General Assembly has specified which criminal offenses can lead to civil forfeiture actions:

- All vehicles, weapons, and equipment connected with the illegal manufacture of alcoholic beverages;¹³
- All money or property, real or personal, together with any interest or profits derived from the investment of such money, used in substantial connection with any act of terrorism;¹⁴
- Any vehicle used by the owner, or with his knowledge:
 - (i) During the commission of a second or subsequent prostitution offense;¹⁵
 - (ii) To transport stolen property worth \$200 or more;¹⁶
 - (iii) To transport stolen property of any value that was taken in a robbery;¹⁷
 - (iv) During an abduction (including a misdemeanor parental abduction);¹⁸ or,
 - (v) A first offense of pimping, if the prostitute is a minor.¹⁹
- All moneys and other income, including proceeds earned but not yet received from a third party, as a result of computer crimes, as well as the computer equipment, software, and all personal property;²⁰
- Any unlawful electronic communication device possessed or sold in violation of Article 5.1 of Chapter 6 of the Code of Virginia;²¹
- Any money, or personal or real property used in substantial connection with money laundering;²²
- Any fixtures, equipment, materials and personal property used in substantial connection with cigarette trafficking or counterfeit cigarettes;²³

- All money, equipment, motor vehicles, and all other personal and real property used in connection with drug distribution or manufacture, or the distribution of more than half an ounce of marijuana;²⁴
- Any weapons that were unlawfully possessed or carried concealed, or were used in the commission of a criminal offense;²⁵
- Any money, gambling devices, and other equipment and personal property used in connection with an illegal gambling transaction;²⁶
- Any audio and visual equipment, electronic equipment, and other personal property used in connection with child pornography, or the solicitation of a minor using a communications device in violation of Va. Code § 18.2-374.3;²⁷
- All moneys and other property, real and personal, used to further the abduction of a child;²⁸
- Any money or other thing of value improperly derived or obtained by a state or local government employee in violation Va. Code §§ 2.2-3103 through 2.2-3112 (i.e., improper acceptance of gifts, bribes, etc.);²⁹
- Any vehicle solely owned and operated by a person convicted of felony DUI;³⁰ and,
- Any money, equipment, motor vehicles, and other personal and real property of any kind, that was used in connection with abduction, extortion, prostitution, or illegal wage withholding.³¹

The authorizing statutes for asset forfeiture have been developed piecemeal. Different crimes allow for different types of property to be forfeited. For example, real property can be forfeited if connected with terrorism, drug distribution, money laundering, prostitution or illegal wage withholding;³² however, it cannot be forfeited if connected with gambling, the manufacture of child pornography, or cigarette trafficking.³³ Slightly different procedures and limitations can be involved, depending on the statute, even for the same type of property. For example, depending on which Code section is violated, a vehicle may be forfeited with or without a conviction. Under Va. Code § 19.2-386.16, a vehicle can be forfeited, without a conviction, if it is used to transport stolen property worth more than \$200, used to transport property obtained in a robbery (regardless of value), used for a second offense involving prostitution (including misdemeanor solicitation), used for a first offense of pimping if the victim is a juvenile, or used for abduction in violation of Va. Code § 18.2-48. However, under Va. Code § 19.2-386.34, a conviction is required to forfeit a vehicle for a felony violation of drunk driving under Va. Code § 18.2-266.

Currently, there are several statutes that require a conviction for the forfeiture to proceed, including weapons unlawfully carried or used in the commission of a felony,³⁴ forfeiture of property used in connection with child pornography,³⁵ forfeiture of property used in connection with child abduction,³⁶ felony DUI,³⁷ and, prostitution, abduction, and extortion.³⁸

Virginia Law and the Asset Forfeiture Process

The process for most civil forfeiture actions in Virginia is governed by Chapter 22.1 of Title 19.2 of the Code of Virginia. Per Va. Code § 19.2-386.1, the forfeiture action is commenced when the Commonwealth's Attorney files an information with the circuit court clerk. There is a strict requirement that the information be filed "within three years of the date of actual discovery by the Commonwealth of the last act giving rise to the forfeiture."

However, most items are initially seized by law enforcement in the course of investigations or arrests. In those instances, law enforcement notifies the Commonwealth's Attorney "forthwith" in writing of the seizure, per Va. Code § 19.2-386.3(A). Law enforcement must also conduct an

inventory of the seized property and “as soon as practicable” provide a copy to the owner. However, Va. Code § 19.2-386.2(C) does specify that “failure to provide a copy of the inventory shall not invalidate any forfeiture.”

Once the Commonwealth’s Attorney receives notice of the seizure from law enforcement, he shall, within 21 days, file a “notice of seizure for forfeiture” with the circuit court. The notice will state the property seized, the grounds for and date of the seizure, and all owners and lien holders then known, as outlined in Va. Code § 19.2-386.3(A).³⁹ The clerk of court then mails “forthwith” by first-class mail notice of seizure for forfeiture to the last known address of all identified owners and lienholders as required by Va. Code § 19.2-386.3(A).

If the property seized is a motor vehicle, a special procedure is required pursuant to Va. Code § 19.2-386.2:1. First, the Commonwealth’s Attorney shall notify the Commissioner of the Virginia Department of Motor Vehicles (DMV) of the seizure of the vehicle, by certified mail. Next, the Commissioner then “promptly certifies” to the Commonwealth’s Attorney the name and address of the person to whom the vehicle is registered, together with the name and address of any lien holders. Finally, the Commissioner also notifies the owners and lien holders in writing of the seizure and where it occurred.

The Commonwealth’s Attorney must file an information in the circuit court within 90 days of the seizure, or the property shall be released to the owner of lien holder according to Va. Code § 19.2-386.3(A). All parties defendant must then be served a copy of the information and a notice to appear. Per Va. Code § 19.2-386.3(B), the notice “shall contain a statement warning the party defendant that his interest in the property shall be subject to forfeiture...unless within 30 days after service, an answer under oath is filed.”

If the information is filed before the property is seized, either the clerk of court or a judge of the court, upon a motion by the Commonwealth’s Attorney, shall issue a warrant to law enforcement authorized to serve criminal process in the jurisdiction where the property is located to seize the property under Va. Code § 19.2-386.2(A). If the property is real property, a notice of *lis pendens* shall be filed with the clerk of the circuit court where the property is located in accordance with Va. Code § 19.2-386.2(B).

At any time prior to the filing of an information, the Commonwealth’s Attorney may, “upon payment of costs incident to the custody of the seized property, return the seized property to an owner or lien holder” per Va. Code § 19.2-386.5. The owner or lien holder of seized property also has the right, under Va. Code § 19.2-386.6, to request the clerk of court appraise the value of the property. The owner can then post a bond for its fair cash value, plus court costs and the costs of the appraisal, and have the property returned. If the property is “perishable or liable to deterioration, decay, or injury by being detained in custody pending the proceedings,” the circuit court may order the property sold, and hold the proceeds of the sale pending final disposition of the case per Va. Code § 19.2-386.7.

Under Va. Code § 19.2-386.9, a party defendant “may appear at any time within thirty days after service on him,” and answer under oath “the nature of the defendant’s claim,” the title or interest in the property, and “the reason, cause, exemption or defense he may have against the forfeiture of the property.” Further, if an owner or lien holder has not received actual or constructive notice of the action, he may appear at any time prior to final judgment and may be made a party.

If a party defendant fails to appear, he shall be in default. However, within 21 days after the entry of judgment, a party defendant may petition the Department of Criminal Justice Services (DCJS) “for remission of his interest in the forfeited property.”⁴⁰ For good cause shown and upon proof of the defendant’s valid exemption, DCJS shall grant the petition and direct the state treasury to either remit to the defendant an amount not exceeding his interest in the property, or convey clear and absolute title to the forfeited property under Va. Code § 19.2-386.10.

If a party defendant appears, the case proceeds to trial. Trial by jury can be demanded by either the Commonwealth or the party defendant. The Commonwealth has the burden of proving the property is subject to forfeiture. Upon such a showing, the “claimant” has the burden of proving his interest in the property is “exempt” under subdivision 2, 3, or 4 of Va. Code § 19.2-386.8. Per Va. Code § 19.2-386.10(A), the proof of all issues shall be by a preponderance of the evidence. It should be noted that, under Va. Code § 19.2-386.10(B), the forfeiture action “shall be independent of any criminal proceeding against any party 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 any indictment or information.”

As discussed above, there are several exemptions a defendant can assert for seized property pursuant to Va. Code § 19.2-386.8:

- (i) A conveyance used by a common carrier, unless the owner was a consenting party or knew of the illegal conduct;
- (ii) A conveyance used by a criminal, not the owner, who was in unlawful possession of the conveyance;
- (iii) Any property if the owner did not know and had no reason to know of the illegal conduct;
- (iv) A bona fide purchaser for value without notice;
- (v) The illegal conduct occurred without the owner’s “connivance or consent, express or implied;” or,
- (vi) The illegal conduct was committed by a tenant, and the landlord did not know or have reason to know of the tenant’s conduct.

The exemptions of a defendant who is a lien holder are similar:

- (i) The lien holder did not know of the illegal conduct at the time the lien was granted;
- (ii) The lien holder held a bona fide lien that was perfected prior to the seizure of the property;
and,
- (iii) The illegal conduct occurred without his “connivance or consent, express or implied.”

In the event there is a sale of the property to a bona fide purchaser for the value in order to avoid the consequences of a forfeiture, “the Commonwealth shall have a right of action against the seller of the property for the proceeds of the sale” under Va. Code § 19.2-386.9.

Once the property has been forfeited, it is either sold, returned to a law enforcement agency, or destroyed if the value of the property “is of such minimal value that the sale would not be in the best interest of the Commonwealth,” per Va. Code § 19.2-386.11(A). Under Va. Code § 19.2-386.11(C), contraband and weapons may be ordered destroyed by the court. Any sale of forfeited property, according to Va. Code § 19.2-386.12(A), “shall be made for cash, after due advertisement...by public sale or other commercially feasible means.”

Any costs, including sales commission and costs for the storage and maintenance of the property, shall be paid out of the net proceeds from the sale of the property. If there are no net proceeds, the

costs and expenses shall be paid by the Commonwealth from the Criminal Fund per Va. Code § 19.2-386.12(B). Additionally, parties in interest to any forfeiture “shall be entitled to reasonable attorneys’ fees and costs if the forfeiture proceeding is terminated in [their] favor.” The total amount of these expenses disbursed by the Criminal Fund has varied each year as seen in Table 3.

Table 3: Expenses Paid by Criminal Fund Pursuant to Va. Code § 19.2-386.12, FY12-FY15

FY	Individuals Receiving Vouchers	Total Amount Disbursed
2012	5	\$3,537
2013	6	\$11,120
2014	4	\$2,005
2015	7	\$5,816
TOTAL	22	\$22,478

Source: Office of the Executive Secretary, Supreme Court of Virginia.

Finally, there is a specified process for the disbursement of proceeds from forfeited assets relating to criminal drug activity that are \$500 or greater. Whenever such assets are forfeited, DCJS retains 10% of the proceeds “in a non-reverting fund, known as the Asset Sharing Administrative Fund” as outlined in Va. Code § 19.2-386.14(A1). The remaining proceeds are then distributed by DCJS to any “federal, state or local agency or office that directly participated in the investigation or other law-enforcement activity which led...to the seizure and forfeiture” pursuant to Va. Code § 19.2-386.14(B). It is also mandated that forfeited property and proceeds not be used to supplant existing programs or funds, per Va. Code § 19.2-386.12(D).

Legal Overview of State and Federal Forfeiture Statutes

A review of the forfeiture statutes of all fifty states, as well as the federal government, was conducted with a particular focus on the following issues:

- (i) whether a conviction is required in order for a forfeiture to proceed;
- (ii) the burden of proof required to establish forfeiture;
- (iii) the burden of proof for an “innocent owner” exception and which party bears that burden;
- (iv) whether either party is entitled to a stay of the forfeiture proceedings; and,
- (v) whether a prevailing claimant is entitled to costs and/or attorney fees.

The findings of this review were categorized so as to develop a general overview of how the jurisdictions addressed each issue.⁴¹

Is a conviction required in order for a forfeiture to proceed?

The forfeiture statutes were reviewed for language indicating whether or not a criminal conviction was required as a prerequisite for a forfeiture to proceed. The results were as follows:

Twenty-four (24) jurisdictions contain no specific language in their forfeiture statutes requiring a conviction. These jurisdictions are: Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida,

Idaho, Indiana, Kentucky, Maine, Massachusetts, Mississippi, Nebraska, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, **Virginia**, Washington, West Virginia, Wisconsin and Wyoming.

Eleven (11) jurisdictions explicitly do not require a conviction in order for a forfeiture to proceed. These jurisdictions are: Alaska,⁴² Georgia,⁴³ Hawaii,⁴⁴ Illinois,⁴⁵ Iowa,⁴⁶ Kansas,⁴⁷ Louisiana,⁴⁸ New Jersey,⁴⁹ Ohio,⁵⁰ Texas⁵¹ and the federal government.⁵²

Eight (8) jurisdictions require a conviction in certain instances in order for a forfeiture to proceed. These jurisdictions are: California,⁵³ Colorado,⁵⁴ Maryland,⁵⁵ Minnesota,⁵⁶ New York,⁵⁷ North Carolina,⁵⁸ Tennessee⁵⁹ and Utah.⁶⁰

Eight (8) jurisdictions require a conviction in most instances in order for a forfeiture to proceed.⁶¹ These jurisdictions are: Michigan,⁶² Missouri,⁶³ Montana,⁶⁴ Nevada,⁶⁵ New Hampshire,⁶⁶ New Mexico,⁶⁷ Oregon⁶⁸ and Vermont.⁶⁹

What is the burden of proof required to establish forfeiture?

The forfeiture statutes were reviewed to determine the burden of proof that the government must satisfy in order to establish forfeiture of the subject property. The results were as follows:

Twenty-four (24) jurisdictions use a preponderance of the evidence standard. These jurisdictions are: Arizona,⁷⁰ Arkansas,⁷¹ Georgia,⁷² Hawaii,⁷³ Idaho,⁷⁴ Indiana,⁷⁵ Iowa,⁷⁶ Kansas,⁷⁷ Louisiana,⁷⁸ Maine,⁷⁹ Maryland,⁸⁰ Michigan,⁸¹ Mississippi,⁸² Missouri,⁸³ New Hampshire,⁸⁴ New Jersey,⁸⁵ Ohio,⁸⁶ Oklahoma,⁸⁷ Pennsylvania,⁸⁸ Texas,⁸⁹ **Virginia**,⁹⁰ Washington,⁹¹ West Virginia⁹² and the federal government.⁹³

Nine (9) jurisdictions use a probable cause standard. These jurisdictions are: Alaska,⁹⁴ Delaware,⁹⁵ Illinois,⁹⁶ Massachusetts,⁹⁷ North Dakota,⁹⁸ Rhode Island,⁹⁹ South Carolina,¹⁰⁰ South Dakota¹⁰¹ and Wyoming.¹⁰²

One (1) jurisdiction uses a prima facie case by reasonable satisfaction standard. This standard is used in Alabama.¹⁰³

One (1) jurisdiction uses a reasonable certainty by greater weight of the credible evidence standard. This standard is used in Wisconsin.¹⁰⁴

Eight (8) jurisdictions use a clear and convincing evidence standard. These jurisdictions are: Colorado,¹⁰⁵ Connecticut,¹⁰⁶ Florida,¹⁰⁷ Minnesota,¹⁰⁸ Montana,¹⁰⁹ Nevada,¹¹⁰ New Mexico¹¹¹ and Vermont.¹¹²

Two (2) jurisdictions use a beyond a reasonable doubt standard. These jurisdictions are: Nebraska¹¹³ and North Carolina.¹¹⁴

Six (6) jurisdictions use multiple burden of proof standards. The variance in the burden of proof is typically based upon the type of property to be forfeited. The jurisdictions which use multiple standards are:

- California, where clear and convincing evidence is required for cash or negotiable instruments;¹¹⁵ and, beyond a reasonable doubt for real property, vehicles and various other personal property;¹¹⁶

- Kentucky, where *prima facie* evidence is required for personal property;¹¹⁷ and, clear and convincing evidence for real property;¹¹⁸
- New York, where preponderance of the evidence is required for property of a convicted criminal defendant or of proceeds, substitute proceeds, or instrumentalities of a crime for a non-criminal defendant;¹¹⁹ and, clear and convincing evidence for real property of a non-criminal defendant;¹²⁰
- Oregon, where preponderance of the evidence is required for personal property; and, clear and convincing evidence for real property;¹²¹
- Tennessee, where preponderance of the evidence is required for personal property;¹²² and, beyond a reasonable doubt for real property;¹²³ and,
- Utah, where clear and convincing evidence is required for a civil forfeiture;¹²⁴ and, beyond a reasonable doubt for a criminal forfeiture.¹²⁵

What is the burden of proof for an “innocent owner” exception in a forfeiture proceeding and which party bears that particular burden of proof?

The forfeiture statutes were reviewed to determine the burden of proof required to establish an “innocent owner” exception at a forfeiture proceeding. The results were as follows:

Twenty-six (26) jurisdictions use a preponderance of the evidence standard. These jurisdictions are: Alaska,¹²⁶ Arizona,¹²⁷ Arkansas,¹²⁸ Florida,¹²⁹ Hawaii,¹³⁰ Idaho,¹³¹ Illinois,¹³² Indiana,¹³³ Iowa,¹³⁴ Kansas,¹³⁵ Louisiana,¹³⁶ Maine,¹³⁷ Maryland,¹³⁸ Michigan,¹³⁹ Nebraska,¹⁴⁰ New Hampshire,¹⁴¹ New Jersey,¹⁴² North Dakota,¹⁴³ Ohio,¹⁴⁴ Rhode Island,¹⁴⁵ South Carolina,¹⁴⁶ South Dakota,¹⁴⁷ Texas,¹⁴⁸ **Virginia**,¹⁴⁹ Washington¹⁵⁰ and the federal government.¹⁵¹

Four (4) jurisdictions use a clear and convincing evidence standard. These jurisdictions are: Colorado,¹⁵² Minnesota,¹⁵³ Montana¹⁵⁴ and New Mexico.¹⁵⁵

Fifteen (15) jurisdictions do not specify the “innocent owner” burden of proof in their forfeiture statutes. These jurisdictions are: Alabama, Connecticut, Delaware, Georgia, Massachusetts, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, Pennsylvania, Tennessee, West Virginia, Wisconsin and Wyoming.

Six (6) jurisdictions use multiple burden of proof standards. The variance in the burden of proof is typically based upon the type of property to be forfeited. The jurisdictions which use multiple standards are:

- California, where a clear and convincing evidence is required for cash and negotiable instruments;¹⁵⁶ and, beyond a reasonable doubt for conveyances, real property and various personal property;¹⁵⁷
- Kentucky, where preponderance of evidence is required generally;¹⁵⁸ and, clear and convincing for personal property related to controlled substance violations and real property;¹⁵⁹
- New York, where preponderance of the evidence is required for personal property;¹⁶⁰ and, clear and convincing evidence for real property;¹⁶¹
- Oregon, where preponderance of the evidence is required generally,¹⁶² as well as for cash, weapons or negotiable instruments;¹⁶³ and, clear and convincing evidence for real property;¹⁶⁴

- Utah, where preponderance of the evidence is required for a non-criminal defendant in a criminal forfeiture;¹⁶⁵ clear and convincing evidence for a civil forfeiture;¹⁶⁶ and, beyond a reasonable doubt for a criminal forfeiture;¹⁶⁷ and,
- Vermont, where preponderance of the evidence is required for a non-criminal defendant;¹⁶⁸ and, clear and convincing evidence for a convicted criminal defendant.¹⁶⁹

In addition to the “innocent owner” burden of proof standard, the forfeiture statutes were reviewed to determine which party had the burden of satisfying or overcoming the “innocent owner” exception. The results were as follows:

In thirty-four (34) jurisdictions, the claimant bears the burden of proving the “innocent owner” exception. These jurisdictions are: Alaska,¹⁷⁰ Arizona,¹⁷¹ Arkansas,¹⁷² Delaware,¹⁷³ Georgia,¹⁷⁴ Hawaii,¹⁷⁵ Idaho,¹⁷⁶ Illinois,¹⁷⁷ Iowa,¹⁷⁸ Kansas,¹⁷⁹ Louisiana,¹⁸⁰ Maryland,¹⁸¹ Massachusetts,¹⁸² Mississippi,¹⁸³ Missouri,¹⁸⁴ Nebraska,¹⁸⁵ Nevada,¹⁸⁶ New Hampshire,¹⁸⁷ New Jersey,¹⁸⁸ North Carolina,¹⁸⁹ North Dakota,¹⁹⁰ Oklahoma,¹⁹¹ Pennsylvania,¹⁹² Rhode Island,¹⁹³ South Carolina,¹⁹⁴ South Dakota,¹⁹⁵ Tennessee,¹⁹⁶ Texas,¹⁹⁷ **Virginia**,¹⁹⁸ Washington,¹⁹⁹ West Virginia,²⁰⁰ Wisconsin,²⁰¹ Wyoming²⁰² and the federal government.²⁰³

In eleven (11) jurisdictions, the State bears the burden of proving that the claimant was not an “innocent owner.” These jurisdictions are: California,²⁰⁴ Colorado,²⁰⁵ Connecticut,²⁰⁶ Florida,²⁰⁷ Indiana,²⁰⁸ Michigan,²⁰⁹ Minnesota,²¹⁰ Montana,²¹¹ New Mexico,²¹² New York²¹³ and Ohio.²¹⁴

Six (6) jurisdictions use a mixed requirement in regard to the party that bears the burden of proving or disproving an “innocent owner” exception. The variance in the burden is typically based upon the type of property to be forfeited. The jurisdictions which use mixed requirements are:

- Alabama, where the State has the burden for real property and fixtures; and, the claimant has the burden for other property;²¹⁵
- Kentucky, where the State has the burden for real property;²¹⁶ and, the claimant has the burden for other property²¹⁷ and in forfeitures related to controlled substance violations;²¹⁸
- Maine, where the State has the burden for real property involving spouse/child of co-owner of primary residence;²¹⁹ and, the claimant has the burden for other property;²²⁰
- Oregon, where the State has the burden generally and for real property;²²¹ and, the claimant has the burden if property sought for forfeiture is cash, weapons or negotiable instruments;²²²
- Utah, where the State has the burden for civil²²³ and criminal²²⁴ forfeitures; and, the claimant has the burden in criminal forfeiture if the claimant is a non-criminal defendant;²²⁵ and
- Vermont, where the State has the burden for forfeitures generally;²²⁶ and the claimant has the burden if said claimant is a non-criminal defendant.²²⁷

Is either party entitled to a stay of the forfeiture proceeding while a related criminal proceeding is pending?

The forfeiture statutes were reviewed to determine whether either party was entitled to a stay of the forfeiture proceeding during the pendency of a related criminal proceeding. The forfeiture statutes were further reviewed to determine whether the stay was discretionary or mandatory and which party was permitted to request the stay. The results were as follows:

Ten (10) jurisdictions provide that a stay may be granted on the motion of the State or the claimant. These jurisdictions are: Alaska,²²⁸ Arizona,²²⁹ Georgia,²³⁰ Iowa,²³¹ Mississippi,²³² New Hampshire,²³³ New Jersey,²³⁴ Oregon,²³⁵ **Virginia**²³⁶ and the federal government.²³⁷

Four (4) jurisdictions provide that a stay may be granted on the motion of the State. These jurisdictions are: Hawaii,²³⁸ Illinois,²³⁹ Kansas²⁴⁰ and Louisiana.²⁴¹

Three (3) jurisdictions provide that a stay may be granted on the motion of the claimant. These jurisdictions are: Massachusetts,²⁴² Utah²⁴³ and Wisconsin.²⁴⁴

Seven (7) jurisdictions provide that a stay shall be granted.²⁴⁵ These jurisdictions are: California,²⁴⁶ Colorado,²⁴⁷ Maryland,²⁴⁸ Missouri,²⁴⁹ Nevada,²⁵⁰ New York²⁵¹ and Tennessee.²⁵²

Is a prevailing claimant entitled to costs and/or attorney fees?

The forfeiture statutes were reviewed to determine whether a prevailing claimant was entitled to costs and/or fees at the conclusion of the forfeiture proceeding. The review first focused on the issue of costs and/or fees generally. The review then focused on whether the forfeiture statutes specifically addressed attorney fees for a prevailing claimant. The results were as follows:

Six (6) jurisdictions provide that costs and/or fees are automatically awarded to a prevailing claimant. These jurisdictions are: Alabama,²⁵³ Iowa,²⁵⁴ Oregon,²⁵⁵ Utah,²⁵⁶ **Virginia**²⁵⁷ and Washington.²⁵⁸

Two (2) jurisdictions provide that a prevailing claimant is automatically exempted from costs and/or fees. These jurisdictions are: Colorado²⁵⁹ and Nebraska.²⁶⁰

Four (4) jurisdictions provide that costs and/or fees are awarded to a prevailing claimant upon a discretionary ruling of the court. These jurisdictions are: Arizona,²⁶¹ Hawaii,²⁶² New York²⁶³ and Rhode Island.²⁶⁴

Four (4) jurisdictions provide for a mixed award of costs and/or fees to a prevailing claimant. These jurisdictions are: Florida,²⁶⁵ Louisiana,²⁶⁶ Minnesota²⁶⁷ and New Mexico.²⁶⁸

In regard to the issue of attorney fees for a prevailing claimant, the review of the forfeiture statutes provided the following:

Five (5) jurisdictions provide that a prevailing claimant shall be awarded attorney fees. These jurisdictions are: Iowa,²⁶⁹ Oregon,²⁷⁰ Utah,²⁷¹ **Virginia**²⁷² and Washington.²⁷³

Four (4) jurisdictions provide that a prevailing claimant may be awarded attorney fees upon a requisite finding by the court. These jurisdictions are: Florida,²⁷⁴ Louisiana,²⁷⁵ Minnesota²⁷⁶ and New York.²⁷⁷

Summary of Forfeiture Statutes

The statutory forfeiture scheme in Virginia is substantially similar to most of the other states and the federal government. A majority of the states and the federal government are analogous to Virginia in the following ways: a criminal conviction is not required as a prerequisite to forfeiture, the burden of proof required to establish forfeiture is preponderance of the evidence or a similar evidentiary standard, and the claimant bears the burden of proving an “innocent owner” exception

after the government has proven the property is subject to forfeiture. The main distinction between Virginia and the other jurisdictions is that Virginia is in the minority of jurisdictions that mandate reimbursement of attorney fees to a claimant who prevails in a forfeiture proceeding.

Asset Forfeiture Data

Overview

Staff requested data from the U.S. Departments of Justice and Treasury, as well as a number of Virginia agencies including DCJS, the Supreme Court of Virginia, the Department of Accounts, the Criminal Injuries Compensation's Criminal Fund, and the Department of Motor Vehicles.

In Virginia, law enforcement and prosecutors can participate in the federal Department of Justice's Asset Forfeiture Program, the federal Treasury Forfeiture Fund managed by the U.S. Department of the Treasury, Virginia's Forfeited Asset Sharing Program, or all three programs. Most, however, participate in the state program only. In FY14, Virginia received a combined total of approximately \$10.8 million in disbursements from the U.S. Department of Justice and state asset forfeiture programs. Specifically, \$6,641,267 was disbursed from the federal program and \$4,185,594 was disbursed from the state program (as of September 8, 2015). Virginia also receives disbursements from the Treasury Forfeiture Fund managed by the U.S. Department of the Treasury; however, an anomaly exists in the amount disbursed during recent years due to the Abbott Laboratories settlement where Virginia was awarded over \$115 million to be distributed over the course of FY13-FY16, as will be discussed in more detail below.

U.S. Department of Justice Asset Forfeiture Program

The U.S. Department of Justice's (DOJ) Asset Forfeiture Program "encompasses the seizure and forfeiture of assets that represent the proceeds of, or were used to facilitate federal crimes. The primary mission of the Program is to employ asset forfeiture powers in a manner that enhances public safety and security...accomplished by removing the proceeds of crime and other assets relied upon by criminals and their associates to perpetuate the criminal activity against our society."²⁷⁸ The Program is authorized to share the proceeds of federal forfeitures, as well as other resources, with cooperating state and local law enforcement agencies.²⁷⁹ Table 4 illustrates the amount of proceeds disbursed to states in FY14. California and New York received the largest disbursements from the Program. Virginia was ranked 15th, receiving a disbursement of \$6,641,267.²⁸⁰

Table 4: Top 15 States Receiving Disbursals from DOJ's AF Program, FY14

Rank	State	Total
1	California	\$77,400,978
2	New York	\$76,140,067
3	Texas	\$26,594,306
4	Georgia	\$22,736,427
5	Florida	\$17,045,912
6	Rhode Island	\$17,026,355
7	Illinois	\$16,143,203
8	New Jersey	\$12,258,703
9	North Carolina	\$10,805,901
10	Pennsylvania	\$10,079,052
11	Connecticut	\$8,823,913
12	Ohio	\$8,402,535
13	Michigan	\$8,101,026
14	Massachusetts	\$7,719,173
15	Virginia	\$6,641,267

Source: U.S. Department of Justice, Asset Forfeiture Fund Reports to Congress, Equitable Sharing Payments.

Table 5 illustrates the total proceeds disbursed from the Program to Virginia from FY04-FY14. The total number of agencies participating in and the total monies disbursed have remained fairly consistent over the past 11 years. An anomaly does exist in FY07-FY08, which is explained by one large case involving one Virginia law enforcement agency. These disbursals came as a result of a \$600 million dollar OxyContin settlement case involving Purdue Pharma, of which the Virginia agency received \$44 million over that two year period.²⁸¹ When removing this large disbursal, the total disbursed to the remaining agencies was approximately \$4.5 million in 2007 and \$5.6 million in 2008, which is consistent with all of the other fiscal years.

Table 5: Total Disbursed from DOJ's AF Program to Virginia, FY04-FY14

FY	# Agencies	Total Disbursed
2004	77	\$4,268,111
2005	84	\$4,069,042
2006	66	\$4,948,114
2007	82	\$29,647,752*
2008	75	\$26,673,908*
2009	84	\$7,067,360
2010	75	\$5,701,332
2011	84	\$6,331,350
2012	75	\$7,326,146
2013	66	\$4,382,422
2014	75	\$6,641,267
TOTAL		\$107,056,804

Source: U.S. Department of Justice, Asset Forfeiture Fund Reports to Congress, Equitable Sharing Payments. *Anomaly due to one large case settlement disbursed over a 2-year time period to one agency.

It must be noted that a letter from DOJ to all state, local and tribal law enforcement agencies was published on December 21, 2015, explaining the financial implications of budget legislation passed in late 2015 impacting the equitable sharing program. The legislation included a \$746 million dollar reduction, or “rescission,” of Asset Forfeiture Program Funds,²⁸² as well as an additional \$458 million rescission in the FY16 budget.²⁸³ As a result of these rescissions, DOJ was “deferring for the time being any equitable sharing payments from the Program.”²⁸⁴ No further equitable sharing program payments were to be made until the deferral was lifted. On March 28, 2016, DOJ announced that the Department was lifting the deferral and resuming Equitable Sharing payments effective immediately.²⁸⁵

U.S. Department of Treasury’s Forfeiture Program

States may also participate in the Treasury Forfeiture Fund (TFF) managed by the U.S. Department of the Treasury. This Fund was established in 1992 and includes the following federal agencies: Internal Revenue Service Criminal Investigations Division, the U.S. Immigration and Customs Enforcement, the U.S. Customs and Border Protection, the U.S. Secret Service, and the U.S. Coast Guard. The mission of the Fund is to “affirmatively influence the consistent and strategic use of asset forfeiture by participating agencies to disrupt and dismantle criminal enterprises.”²⁸⁶

As seen in Table 6, Virginia ranked 2nd in the total disbursement amounts received in FY14. However, it must be stressed that this is a somewhat atypical ranking for Virginia as it received a very large disbursement of funds resulting from a single, large settlement.

Table 6: Top 15 States Receiving Disbursals from TFF Program (Currency Value Only), FY14

Rank	State	Total
1	New York	\$139,617,000
2	Virginia	\$61,417,000*
3	Florida	\$19,267,000
4	California	\$12,182,000
5	Texas	\$9,742,000
6	New Jersey	\$5,940,000
7	Illinois	\$5,112,000
8	North Carolina	\$5,095,000
9	Nevada	\$4,410,000
10	Georgia	\$4,135,000
11	Maryland	\$3,783,000
12	South Carolina	\$3,059,000
13	Massachusetts	\$2,721,000
14	Indiana	\$2,536,000
15	Guam	\$2,373,000

Source: U.S. Department of Treasury, Treasury Forfeiture Fund Accountability Report, Fiscal Year 2014. *Anomaly due to partial funds disbursed from Abbott settlement.

As seen in Table 7, the total disbursed from the Fund to Virginia varies each year; however, one large settlement, totaling over \$115 million, has been distributed over the course of FY13-FY16, rather than in one lump sum. The Abbott Laboratories settlement accounts for the vast majority of disbursals received from the Fund during this time frame and represents an anomaly to totals typically received in prior years.

**Table 7: Total Disbursed from TFF Program to Virginia,
(Currency and Property Value)
FY04-FY14**

FY	Total
2004	\$434,000
2005	\$3,877,000
2006	\$2,954,000
2007	\$1,880,000
2008	\$10,827,000
2009	\$1,794,000
2010	\$1,386,000
2011	\$994,000
2012	\$628,000
2013	\$45,838,000*
2014	\$61,423,000*
TOTAL	\$132,035,000

Source: U.S. Department of Treasury, Treasury Forfeiture Fund Accountability Reports, Fiscal Years 2004-2014. *Anomaly due to partial funds disbursed from Abbott Settlement.

Virginia DCJS Forfeited Asset Sharing Program

In 1991, DCJS began managing the tracking and reimbursement of state drug-related forfeitures in Virginia. Since that time, DCJS has disbursed over \$106 million dollars to Virginia law enforcement and prosecutors.²⁸⁷ The data maintained by DCJS is fairly comprehensive for all state drug-related items seized valued at \$500 or more. However, their data does not account for any items seized pursuant to non-drug related crimes and less detailed information is collected for drug-related forfeitures valued at less than \$500.²⁸⁸ Agencies are only required to itemize forfeitures valued at less than \$500 on their annual certification reports as additional asset forfeiture income received. Agencies will typically itemize the case number, description of asset and amount received from seizures valued at less than \$500. Unlike forfeitures valued at or above \$500, DCJS does not retain 10% of the value; rather, the locality keeps the total forfeited value.²⁸⁹

Crime Commission staff requested a number of items from DCJS. First, in order to capture general trends over time, staff requested 10 years of data on seizures made and disbursements received by law enforcement and prosecutors in Virginia. All participating agencies must submit forms for each and every drug-related item seized and must update DCJS on the outcome of each item in each case. Second, staff requested a sample of court orders, which DCJS requires be submitted for all items resulting in a forfeiture. Third, staff requested the FY14 annual certification reports for all 352 participating agencies. These reports require a very detailed, itemized account of how asset forfeiture funds are received and spent, each year, by each participating agency. Finally, staff requested sharing agreements that were on file for all participating agencies. Sharing agreements essentially outline how proceeds from a disbursement are to be distributed once DCJS retains its 10% share. The remaining proceeds are divided according to each agency's or Task Force's sharing

agreement between law enforcement and Commonwealth’s Attorneys’ Offices.²⁹⁰ It does appear that these sharing agreements are effective, as only one dispute regarding local sharing of forfeitures has gone before the Criminal Justice Services Board in the past 20 years.

Ten Year Overview

Table 8 illustrates the general data trends for state drug-related asset forfeitures in Virginia. As illustrated, the number of agencies participating, the number of cases and items seized, the value of items seized and the total amount disbursed back to the agencies each year has remained fairly stable since FY10. More specifically, around \$10 to \$11 million in items have been seized and \$4 to \$5 million have been disbursed back to the participating agencies each year since 2010. It appears that the large increase in cases, items seized, and disbursals received since FY09-FY10 is primarily due to a marked increase in the total number of agencies participating in the state asset forfeiture program. As far as the values of items seized, item values ranged from as low as \$71 to as high as \$1.1 million. The range of disbursals received from DCJS was as low as \$0 (when an item is not forfeited) to as high as \$500,000 for a forfeiture.

Table 8: Ten Year Overview of State Drug-Related Forfeitures, FY06-FY15*

FY	Total Agencies	Total Cases	Total Items Seized	Value of Items Seized	Total Disbursed to Agencies
2006	42	143	189	\$639,152	\$110,899
2007	46	180	219	\$991,263	\$235,460
2008	68	265	365	\$2,020,786	\$266,128
2009	96	432	582	\$2,639,639	\$780,855
2010	158	2,006	2,464	\$10,134,559	\$4,957,627
2011	150	2,002	2,346	\$10,258,608	\$5,350,350
2012	143	2,003	2,457	\$11,576,315	\$5,820,171
2013	161	2,000	2,369	\$11,546,672	\$5,253,183
2014	149	1,994	2,412	\$10,624,949	\$4,185,594
2015	154	1,775	2,123	\$10,250,119	\$5,600,969**
TOTAL		12,800	15,526	\$70,682,062	\$32,561,236

Source: VA Department of Criminal Justice Services. * Data as of September 8, 2015. ** Most recent figure provided on DCJS website retrieved on October 21, 2015.

There are additional overall trends that should be noted. As seen in Table 9, currency is the most frequently seized item each year, followed by vehicles, electronics, jewelry, firearms, property and other items.²⁹¹ Currency and vehicles, however, comprise 85-90% of the items seized each year.

Table 9: Types of Items Seized in State Drug-Related Forfeitures, FY10-FY15

FY	Total Items Seized	Currency	Vehicles	Electronics	Jewelry	Firearms	Property	Boats	Other
2010	2,464	1,511	627	152	64	26	8	4	72
2011	2,346	1,426	604	117	83	39	7	4	66
2012	2,457	1,438	630	139	33	59	7	3	148
2013	2,369	1,541	571	73	75	42	4	1	62
2014	2,412	1,613	585	76	21	46	4	4	63
2015*	2,123	1,505	462	53	15	39	6	0	43

Source: VA Department of Criminal Justice Services. * Data as of September 8, 2015.

Staff analyzed asset forfeiture case outcomes for drug-related cases in FY14. In order to obtain a more accurate conclusion regarding case outcomes, pending cases were removed from the analysis. In FY14, there were 2,412 items seized with 936 having a pending status. When removing these pending cases, there were 1,476 items with a finalized status. The overall case status for the remaining 1,476 items was:

- 75% (1,107 of 1,476) were forfeited;
- 17% (245 of 1,476) were returned to the owner;
- 6% (85 of 1,476) were dismissed in court;
- 2% (34 of 1,476) were released to a lienholder; and,
- <1% (5 of 1,476) was administrative/other.²⁹²

While 75% of overall cases resulted in forfeiture, there are variations in outcomes depending on the *type* of item seized. As illustrated in Table 10, currency is more frequently forfeited than other items. Specifically, 86% (959 of 1,115) of cases involving currency result in the currency being forfeited; whereas, only 41% (116 of 282) of seized vehicles were forfeited in FY14.²⁹³

Table 10: Types of Items Seized by Case Outcome, FY14

Type of Item Seized	Total Items	Forfeited	Return to Owner	Dismissal	Release to Lienholder	Other
Currency	1,115	959	101	53	0	2
Vehicles	282	116	110	29	26	1
Electronics	23	8	12	1	2	0
Jewelry	13	11	1	1	0	0
Boat	3	2	1	0	0	0
Firearms	2	1	1	0	0	0
Real Estate	2	0	2	0	0	0
Other	36	10	17	1	6	2
TOTAL*	1,476	1,107	245	85	34	5

Source: VA Department of Criminal Justice Services. * Only cases with a finalized disposition are included in these figures; pending cases are not included.

Court Order Analysis

Staff was unable to determine the specific circumstances that led to a forfeiture court order based on the 10 year trend data provided by DCJS; it could not be determined what were the usual circumstances in which a forfeiture order was ultimately issued. However, as mentioned earlier, DCJS requires that copies of court orders be submitted in all cases resulting in forfeitures. Staff requested and analyzed a statistically significant sample of court orders from FY14 state drug-related cases with the hope of being able to determine how many forfeitures were a result of default versus other means.

The forfeiture orders were an excellent resource to reach this determination. Of the 388 forfeiture court orders included in the sample, 95% (368 of 388) involved currency. The remaining orders involved vehicles (56 of 388), electronics (12 of 388), firearms (7 of 388) and jewelry (3 of 388).

After reviewing all of the orders, staff determined that:

- 61% (237 of 388) were a result of default (the defendant did not answer or did not appear);
- 28% (108 of 388) involved a defendant signing a plea agreement, waiver, consent to forfeiture or other type of settlement prior to the hearing;
- 11% (41 of 388) involved a defendant, owner, or GAL appearing but case still resulted in forfeiture; and,
- <1% (2 of 288) resulted in trial.²⁹⁴

Unfortunately, since DCJS only requires court orders for cases resulting in forfeiture, there was no way to readily gather information for cases that resulted in the item being returned to the owner, a lienholder, or other outcomes where a forfeiture was not ordered.

Annual Certification Report Analysis

Staff entered and analyzed data from the annual certification reports submitted by all 352 participating agencies for FY14.²⁹⁵ Agencies are required to list a number of items in these certification reports. First, they must indicate their beginning asset forfeiture balance. Agencies reported a range of beginning balances from \$0 to over \$1 million in FY14. Second, agencies must report any additional asset forfeiture funds received in addition to disbursements from DCJS. This category includes items seized that are valued under \$500, proceeds from auction sales, and transfers from other agencies or Task Forces. Agencies reported a range of additional funds from \$0 to \$95,271 in FY14. Third, agencies must report the amount of asset forfeiture funds spent. Agencies reported spending a range of \$0 to \$361,000 in FY14. Finally, agencies must itemize how those funds were spent by specific category, as illustrated in Table 11, which lists the various categories prescribed by DCJS. As seen in Table 11, 75% of the \$4.7 million asset forfeiture dollars were spent on travel/training, communications/computers, and “other” items that did not fall within DCJS’ specified categories. Whenever an item falls into the “other” category, the agency must itemize how the funds were specifically used so DCJS can approve or deny the purchase. The items included in the “other” category varied tremendously, including uniforms, police dogs and their care, drug test kits, task force and other professional dues, expert witnesses, and psychological examinations.

Table 11: Total Forfeiture Funds Spent by Itemized Category, FY14

Category	Number of Agencies	Total Funds Spent	% of Total
Informants/Buys	24	\$44,783	0.9%
Body Armor/Protective Gear	23	\$87,398	1.8%
Firearms/Weapons	30	\$150,942	3.2%
Electronics/Surveillance Equipment	34	\$176,844	3.7%
Building/ Improvements	28	\$340,356	7.2%
Salaries	13	\$366,563	7.7%
Travel/Training	86	\$571,458	12.1%
Communications/Computers	88	\$881,588	18.6%
Other*	137	\$2,120,675	44.7%
TOTAL SPENT		\$4,740,607	

Source: VA Department of Criminal Justice Services, FY14 Annual Certification Reports. * "Other" category included a wide array of approved expenditures for items such as uniforms, K-9 officers, drug test kits, task force/professional dues and expert witnesses.

State Non-Drug Related Data

Staff attempted to determine the amount of funds sent by law enforcement to the Literary Fund from non-drug related asset forfeitures. Since the Literary Fund data requested from the Virginia Department of Accounts was unable to be specifically broken down into total revenue from non-drug related seizures versus other revenues, staff attempted to obtain this information from surveys to law enforcement agencies. Most of the law enforcement agencies reported that they sent \$0 to the Literary Fund in FY14 from their agency. Several more indicated that they did not even track this information. However, 15 agencies *were* able to provide the amount of funds they sent to the Literary Fund in FY14. From the information provided by these agencies, it was determined that a *minimum* of \$159,972 was sent to the Literary Fund from law enforcement agencies for non-drug related crimes such as transportation of stolen goods, gambling, and prostitution in FY14. Unfortunately, these agencies were unable to provide a break down by the type of non-drug related crimes the monies stemmed from as it would have required them to go back through individual case files. Although this issue shows a gap in available data, it is unlikely to be a large gap due to law enforcement and prosecutors reporting that their caseload of asset forfeitures typically involves at least 90% of cases stemming from drug-related crimes, rather than non-drug related crimes.

Survey of Virginia's Law Enforcement and Prosecutors

Staff surveyed all law enforcement agencies and Commonwealth's Attorneys. There was a high response rate with 87% (118 of 135) of primary law enforcement and 83% (99 of 120) of Commonwealth's Attorneys responding. Staff received an additional 56 surveys from town, campus and other law enforcement agencies. Staff also reviewed over 80 policies/general orders relating to asset forfeiture from law enforcement agencies.

All survey respondents indicated that they participated in state asset forfeiture proceedings. However, fewer participated in the federal asset forfeiture programs. Only 85% (100 of 118) of responding law enforcement agencies and 31% (31 of 99) of Commonwealth's Attorneys' Offices reported participating in federal asset forfeiture proceedings.²⁹⁶ The majority of survey respondents reported that they had a designated person(s) to handle these types of cases for their agency or office. The most common type of crimes involved in asset forfeiture cases according to all survey respondents were felony drug offenses. In fact, responding prosecutors reported that 90% or more of the informations filed by their offices in FY14 were for drug-related cases. However, both prosecutors and law enforcement reported handling other eligible offenses, including child pornography, cigarette trafficking, computer crimes, felony DUIs, gambling, money laundering, moonshining/bootlegging, prostitution and transportation of stolen goods.

Most law enforcement agencies, 65% (75 of 115), reported not requiring a criminal charge against someone before referring a civil forfeiture case to their Commonwealth's Attorney. Similarly, 60% (56 of 94) of Commonwealth's Attorneys' Offices do not require a criminal charge against someone before an information is filed for the related civil forfeiture case. Very few respondents indicated that they require a criminal conviction before referring or proceeding with a civil forfeiture case. Specifically, 93% (104 of 112) of law enforcement agencies do not require a criminal conviction before referring to their Commonwealth's Attorney and 82% (78 of 95) of Commonwealth's Attorneys' Offices do not require a criminal conviction before proceeding with a related civil forfeiture case.²⁹⁷ However, it is interesting to note that 40% (38 of 94) of responding Commonwealth's Attorneys' Offices stay civil forfeiture cases until the related criminal case is completely resolved.

Survey respondents were asked to designate their level of support or opposition for three potential options: (1) Requirement to stay a civil asset forfeiture case until any related criminal charges are resolved; (2) Requirement for a criminal charge before the related civil asset forfeiture case can proceed; and, (3) Requirement for a criminal conviction before the related civil asset forfeiture case can proceed. The level of support from law enforcement and prosecutors was very mixed for the first two proposed options as seen in Tables 12 and 13.

Table 12: Support of Requirement to Stay a Civil AF Case

Opinion	Law Enforcement	Commonwealth's Attorneys
Strongly Favor	18% (21)	19% (18)
Somewhat Favor	23% (27)	19% (18)
Somewhat Oppose	12% (14)	17% (16)
Strongly Oppose	34% (39)	34% (32)
Undecided	12% (14)	12% (11)
# Respondents	n=115	n=95

Source: Virginia State Crime Commission, Law Enforcement and Commonwealth's Attorneys' Asset Forfeiture Survey, 2015. Note: Percentages may not total 100% due to rounding.

Table 13: Support of Requirement for a Criminal Charge Before Related Civil AF Case Proceeds

Opinion	Law Enforcement	Commonwealth's Attorneys
Strongly Favor	22% (25)	24% (23)
Somewhat Favor	22% (26)	16% (15)
Somewhat Oppose	13% (15)	15% (14)
Strongly Oppose	37% (43)	39% (37)
Undecided	6% (7)	6% (6)
# Respondents	n=116	n=95

Source: Virginia State Crime Commission, Law Enforcement and Commonwealth's Attorneys' Asset Forfeiture Survey, 2015. Note: Percentages may not total 100% due to rounding.

However, as seen in Table 14, there was strong opposition by both law enforcement and prosecutors to require a criminal conviction before the related civil asset forfeiture case could proceed.

Table 14: Support of Requirement for a Criminal Conviction Before Related Civil AF Case Proceeds

Opinion	Law Enforcement	Commonwealth's Attorneys
Strongly Favor	9% (11)	5% (5)
Somewhat Favor	16% (18)	15% (14)
Somewhat Oppose	11% (13)	16% (15)
Strongly Oppose	51% (59)	62% (59)
Undecided	13% (15)	2% (2)
# Respondents	n=116	n=95

Source: Virginia State Crime Commission, Law Enforcement and Commonwealth's Attorneys' Asset Forfeiture Survey, 2015. Note: Percentages may not total 100% due to rounding.

It appears that nearly all of the responding law enforcement agencies, 97% (113 of 117), maintain a separate account or accounting system for funds related to asset forfeiture. All responding law enforcement agencies reported that they are audited on a regular basis both internally and externally.²⁹⁸ Finally, prosecutors reported that they do not frequently have to inform law enforcement that they will not proceed against a seized item and not file an information: 23% (22 of 95) of offices reported never having to do this, with an additional 34% (32 of 95) reporting that they generally only have to do this 1-2 times per year.

Data Summary

Staff found that excellent data is maintained for state drug-related asset forfeiture cases by DCJS. The volume of cases, items seized, and disbursements received by participating agencies from DCJS have remained consistent over the past five years. The vast majority of seizures involve currency and vehicles. In general, 75% of cases result in forfeiture and 25% of cases result in the item being returned to the owner or a lienholder. Most forfeitures are a result of default or some type of plea agreement or settlement. Very few cases appear to go to trial. Staff found that agencies are held

accountable to the state program through detailed annual certification reports to DCJS. Further, nearly all agencies reported having annual audits by DCJS or other entities.

There were, however, some data limitations identified by staff. Unlike data for drug-related asset forfeitures, non-drug related forfeiture data is not captured in a reliable, transparent manner. Nor is data readily captured to connect any related criminal charges or convictions. Data is also not readily available to ascertain how many civil asset forfeiture trials involve a verdict in favor of the defendant. Staff accordingly made recommendations to help close this gap in available data.

Summary and Conclusion

Senate Bill 684, patroned by Senator Charles Carrico, and House Bill 1287, patroned by Delegate Mark Cole, were introduced during the Regular Session of the 2015 General Assembly and subsequently sent, by bill referral, to the Crime Commission for review. The Executive Committee of the Crime Commission authorized a broad review of asset forfeiture in Virginia. Staff undertook a number of activities to thoroughly examine the topic, including: a review of Virginia and other state and federal statutes, collection of relevant data and literature, a review of recent asset forfeiture cases around the country, a survey of all law enforcement agencies and Commonwealth's Attorneys' Offices, a review of law enforcement agencies' policies/general orders pertaining to asset forfeiture, and numerous meetings with key stakeholders.

Overall, staff found that Virginia's current statutes and practices balance the interests of property owners and the Commonwealth. While additional protections for citizens could be implemented in Virginia, no direct evidence was found of systemic abuse of the asset forfeiture process by law enforcement or prosecutors under Virginia's asset forfeiture laws.

A legal review of all state and federal forfeiture statutes revealed that Virginia is substantially similar to most of the other states and the federal government. A majority of the states and the federal government are analogous to Virginia in the following ways: a criminal conviction is not required as a prerequisite to forfeiture, the burden of proof required to establish forfeiture is preponderance of the evidence or a similar evidentiary standard, and the claimant bears the burden of proving an "innocent owner" exception after the government has proven the property is subject to forfeiture. The main distinction between Virginia and other jurisdictions is that Virginia is in the minority of jurisdictions that mandate reimbursement of attorney fees to a claimant that prevails in a forfeiture proceeding.

In Virginia, law enforcement and prosecutors can participate in DCJS' Forfeited Asset Sharing Program, DOJ's Asset Forfeiture Program, the federal Treasury Forfeiture Fund managed by the U.S. Department of the Treasury, or all three programs. Most, however, participate in the state program only. The total number of agencies participating and the amount of monies disbursed has remained fairly consistent over the past five years from the state and DOJ asset forfeiture programs. However, due to the Abbott Laboratories settlement, where Virginia was awarded over \$115 million, disbursements from the Treasury Forfeiture Fund managed by the U.S. Department of the Treasury during the FY13-FY16 time frame have represented an anomaly to totals received in previous years.

Staff focused the majority of their analysis on data from Virginia's Forfeited Asset Sharing Program. It was found that excellent data is maintained for this program. Since 1991, DCJS has managed the

tracking and reimbursement of all state drug-related forfeitures valued at \$500 or more. All proceeds from state non-drug related forfeitures, which are not tracked by DCJS, are sent to the Literary Fund directly by law enforcement agencies.

The Department of Criminal Justice Services has distributed over \$106 million dollars to Virginia's law enforcement and Commonwealth's Attorneys' Offices since 1991. In general (for drug-related cases), DCJS retains 10% of the proceeds from each forfeited item. The remaining proceeds are distributed based on sharing agreements between law enforcement and Commonwealth's Attorneys' Offices. Staff found that, since 2010, the value of items seized, as well as the total amounts disbursed, has remained stable with approximately \$10 to \$11 million in items seized and \$4 to \$5 million disbursed back to agencies each year. Most seizures involve currency and vehicles. Examining case dispositions, staff found that approximately 75% resulted in forfeiture and 25% resulted in the item being returned to the owner or a lienholder. Taking a closer look at cases resulting in forfeiture, staff found that most asset forfeitures are a result of default judgement or some type of plea agreement or settlement. Very few cases appear to go to trial. Staff found that participating agencies in the state forfeiture program are held accountable through detailed annual certification reports to DCJS. Further, nearly all agencies reported having annual audits conducted internally, by DCJS, or by other independent entities.

There were, however, some data limitations identified by staff. Unlike data for drug-related asset forfeitures, non-drug related forfeiture data is not captured in a reliable, transparent manner. Nor is data readily captured to connect any related criminal charges and convictions with civil forfeiture proceedings. Data is also not readily available to ascertain how many civil asset forfeiture trials involve a verdict in favor of the defendant. Staff accordingly made recommendations to help close this gap in available data.

Staff surveyed all Virginia law enforcement agencies and Commonwealth's Attorneys. There was a high response rate with 87% (118 of 135) of primary law enforcement and 83% (99 of 120) of Commonwealth's Attorneys responding. All survey respondents indicated that they participated in state asset forfeiture proceedings. The majority of survey respondents reported that they had a designated person(s) to handle these types of cases for their agency or office. The most common type of crimes involved in asset forfeiture cases, according to all survey respondents, were felony drug offenses. Responding prosecutors reported that 90% or more of the informations they filed in FY14 were for drug-related cases. However, both prosecutors and law enforcement also reported handling eligible offenses relating to child pornography, cigarette trafficking, computer crimes, felony DUIs, gambling, money laundering, moonshining/bootlegging, prostitution and transportation of stolen goods. Survey respondents were also asked to designate their level of support or opposition for the following three proposed options: (1) Requirement to stay a civil asset forfeiture case until any related criminal charges are resolved; (2) Requirement for a criminal charge before the related civil asset forfeiture case can proceed; and, (3) Requirement for a criminal conviction before the related civil asset forfeiture case can proceed. The level of support from law enforcement and prosecutors was very mixed for the first two proposed options. However, there was strong opposition by both law enforcement and prosecutors to requiring a criminal conviction before the related civil asset forfeiture case could proceed.

The Crime Commission reviewed study findings at its October meeting and directed staff to draft legislation for several key issues, as well as provide a list of additional policy options to consider relating to the requirement of a criminal conviction prior to a civil forfeiture proceeding, burden of proof levels, and stays in relation to forfeiture proceedings.

There were seven staff recommendations presented for the Crime Commission's consideration at its December meeting. Staff recommendations, which were based upon the key findings of the study, focused on transparency of the forfeiture process in Virginia, preventing potential for abuses, as well as automation and efficiencies. The Crime Commission unanimously endorsed all of the following seven staff recommendations at its December meeting:

Recommendation 1: The use of "waivers" by law enforcement, whereby the declared owners or lawful possessors of property "waive" their rights to contest forfeiture, should be prohibited.

Recommendation 1 would not apply to cases where someone denies he is the owner or lawful possessor of property. Staff felt that having law enforcement directly "negotiate" with a property owner, without the direct involvement of a prosecutor and/or an attorney for the owner, can raise the appearance of unfair dealing or coercion. In other states where this practice became widespread, there have been reports that the process was abused.

Recommendation 2: The Virginia Department of Criminal Justice Services (DCJS) should be required to prepare an annual report to the Governor and General Assembly regarding information on all drug and non-drug asset seizures and forfeitures.

Staff believed public confidence in civil forfeiture in Virginia could be improved if information was readily available. A report, as required in Recommendation 2, would be made available to the public and would also include information on disbursements received by Virginia agencies from the federal asset forfeiture programs.

Recommendation 3: The word "warrant" should be added to Va. Code § 19.2-386.10(B), so that a forfeiture proceeding may be stayed if it is also related to a warrant.

Current law only specifies forfeiture proceedings be stayed when related to an indictment or information. Recommendation 3 would allow for instances where the forfeiture is related to a case that is pending for a preliminary hearing and no indictment has yet been prepared.

Recommendation 4: The Virginia Department of Criminal Justice Services (DCJS) should require participating agencies to submit information on all state law enforcement seizures and state forfeiture actions *stemming from any criminal activity*, not just those related to drug offenses.

Currently, Virginia does not have any detailed data readily available on non-drug related asset forfeitures. Recommendation 4 would help capture information related to the roughly 20 other crimes where forfeitures are permitted.

Recommendation 5: The Virginia Department of Criminal Justice Services (DCJS) should collect additional data related to asset forfeitures for criminal charges and convictions that may accompany drug and non-drug related civil asset forfeitures.

Currently, the ability to match criminal charges and convictions with civil forfeiture proceedings is not readily available. Recommendation 5 would allow for some of this information to be more readily available.

Recommendation 6: The Virginia Department of Criminal Justice Services (DCJS) should consider further automating Virginia’s Forfeited Asset Sharing Program so participating agencies have the ability to upload all forms, annual certification reports, and supporting documentation. It was also recommended that Commonwealth’s Attorneys be permitted to notify the Commissioner of the Va. Department of Motor Vehicles (DMV) electronically, as opposed to using certified mail, which is the current requirement, whenever a vehicle has been seized in anticipation of a forfeiture proceeding per Va. Code § 19.2-386.2:1.

Participating agencies in the state asset forfeiture program submit thousands of forms and supporting documentation each year to DCJS. Survey results indicated that participating agencies desired a more automated process. Recommendation 6 encourages a more efficient, automated process for participants.

Recommendation 7: Crime Commission staff should work with law enforcement and prosecutors to help implement training that can be readily accessible online to new asset forfeiture directors.

Finally, staff found that there is a high turnover rate for asset forfeiture coordinators. When a new individual is designated as an asset forfeiture coordinator, he should be able to receive training and education quickly, rather than waiting for the next available course. While training has already been developed, it is not typically offered online or regularly scheduled. Recommendation 7 aims to close any unnecessary gaps in training for new coordinators.

Recommendations 1, 2, 3, and a portion of Recommendation 6 were combined into an omnibus bill. Specifically, the omnibus bill prohibits law enforcement from requesting a “waiver” until after an information is filed, permits electronic notification to DMV of seized vehicles, removes the requirement that DMV certify to the Commonwealth’s Attorney the amount of any lien on a vehicle, allows for the stay of a civil forfeiture proceeding related to a warrant, and requires that DCJS prepare an annual report to the Governor and General Assembly that details all funds forfeited to the Commonwealth as a result of civil asset forfeiture proceedings. The bill does not represent an overhaul of the asset forfeiture process in Virginia, but rather improvements to the functionality and transparency of the present system. The omnibus bill was introduced during the 2016 Regular Session of the Virginia General Assembly in both the Virginia Senate and House of Delegates: Senators Janet Howell and Thomas Norment introduced Senate Bill 423 and Delegate C. Todd Gilbert introduced House Bill 771. Both bills passed the legislature, and were signed into law by the governor; House Bill 771 was signed on March 1, 2016, and Senate Bill 423 was signed on March 11, 2016.

Recommendations 4 and 5 were handled via a letter request from the Crime Commission to DCJS. In response, DCJS indicated that they would request that agencies include information on non-drug asset seizures and forfeitures in their annual reports filed with the agency and that they would modify reporting documents to request information about criminal charges and convictions related to all forfeiture cases. Recommendation 6 was handled by both a letter request to DCJS and a legislative component to address changes to Va. Code § 19.2-386.2:1. This legislative component was included in the two omnibus bills, discussed above, that were signed into law by the governor. Staff will ensure that Recommendation 7 is implemented by meeting with all involved parties in 2016.

There were five policy options presented for the Crime Commission’s consideration at its December meeting. None of the Policy Options were endorsed by the Crime Commission; motions for Policy Options 1, 2, and 3 failed to pass and no motions were made for Policy Options 4 or 5.

Policy Option 1: Should criminal convictions be required, and the conclusion of all appeals, before any civil forfeiture could be ordered? Should additional exceptions be included to what was proposed in SB 684/HB 1287?

Policy Option 2: Should a criminal conviction be required before any civil forfeiture could be ordered?

Policy Option 3: Should the burden of proof on the Commonwealth be increased from “preponderance of the evidence” to “clear and convincing evidence”?

Policy Option 4: Should defendants be entitled to have forfeiture proceedings heard prior to the resolution of any related pending criminal cases, even if the Commonwealth wants to stay the forfeiture cases?

Policy Option 5: Should defendants be entitled to a mandatory stay until the resolution of any related pending criminal cases?

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Virginia Department of Accounts

Virginia Department of Criminal Justice Services

Virginia Department of Motor Vehicles

Virginia Commonwealth’s Attorneys

Virginia Law Enforcement Agencies

Virginia Sheriffs’ Association

Virginia State Compensation Board

Virginia State Police

¹ Revised Code of Virginia of 1819, Chapter 147, section 11. The antecedent for this statute, providing for the forfeiture of prize monies offered for private lotteries or raffles (which were made illegal), was enacted in 1779. October of 1779 Va. Acts, Chapter XLII. This appears to have been the first forfeiture statute in Virginia based upon a criminal activity that did not involve smuggling or the evasion of customs duties; e.g., liquors imported or transported “without producing a proper certificate to the officer into whose district the same shall be transported, shall be liable to be seized and forfeited.” November of 1738 Va. Acts—12th year of the reign of George II, Chapter V, section VI.

² See Williams, M.R. *et al* (March 2010). Policing for Profit: The Abuse of Civil Asset Forfeiture, *Institute for Justice*, available at http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf. For example, the federal Assets Forfeiture Fund was created by Congress in 1984 to allow federal agencies to retain proceeds from their seizures; prior to this time forfeited funds went to the General Fund of the Treasury. *Id.*; Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837 (1984).

³ See Stillman, S. (2013, August 12). Taken. *The New Yorker*. Retrieved from <http://www.newyorker.com/magazine/2013/08/12/taken>; Harki, G. A., & Davenport, J. (2014, May 21). Law enforcement agencies get millions from seizures. *The Virginian-Pilot*. Retrieved from http://pilotonline.com/news/local/crime/law-enforcement-agencies-get-millions-from-seizures/article_9ad7876b-16ca-53d5-9cb1-4b37fbcffb90.html; Sallah, M., O’Harrow, Jr., R., Rich, S., & Silverman, G. (2014, September 6). Stop and seize. *The Washington Post*. Retrieved from <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>; O’Harrow, Jr., R., Sallah, M., & Rich, S. (2014, September 7). Police intelligence targets cash. *The Washington Post*. Retrieved from <http://www.washingtonpost.com/sf/investigative/2014/09/07/police-intelligence-targets-cash/>; O’Harrow, Jr., R., Sallah, M., & Rich, S. (2014, September 8). They fought the law. Who won? *The Washington Post*. Retrieved from <http://www.washingtonpost.com/sf/investigative/2014/09/08/they-fought-the-law-who-won/>; O’Harrow, Jr., R., Rich, S., & Tan, S. (2014, October 11). Asset seizures fuel police spending. *The Washington Post*. Retrieved from www.washingtonpost.com/sf/investigative/2014/10/11/asset-seizures-fuel-police-spending/; Dewan, S. (2014, November 9). Police use department wish list when deciding which assets to seize. *The New York Times*. Retrieved from <http://www.nytimes.com/2014/11/10/us/police-use-department-wish-list-when-deciding-which-assets-to-seize.html>; O’Harrow, Jr., R. (2014, November 10). Highway seizure in Iowa fuels debate about asset-forfeiture laws. *The Washington Post*. Retrieved from https://www.washingtonpost.com/investigations/highway-seizure-in-iowa-fuels-debate-about-asset-forfeiture-laws/2014/11/10/10f725fc-5ec3-11e4-8b9e-2ccdac31a031_story.html?tid=a_inl; O’Harrow, Jr., R., & Rich, S. (2014, November 15). D.C. police plan for future seizure proceeds years in advance in city budget documents. *The Washington Post*. Retrieved from https://www.washingtonpost.com/investigations/dc-police-plan-for-future-seizure-proceeds-years-in-advance-in-city-budget-documents/2014/11/15/7025edd2-6b76-11e4-b053-65cea7903f2e_story.html

⁴ Va. Const. article VIII, § 8.

⁵ *Austin v. United States*, 509 U.S. 602 (1993).

⁶ *U.S. v. James Daniel Good Real Property et al.*, 510 U.S. 43 (1993). It can be noted that the Exclusionary Rule also applies to at least some forfeitures; for instance, those that require a criminal conviction before the civil forfeiture can be ordered. *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965).

⁷ *Id.*

⁸ *Commonwealth v. Brunson*, 248 Va. 347 (1994).

⁹ *Bennis v. Michigan*, 516 U.S. 442 (1996).

¹⁰ *Commonwealth v. Wilks*, 260 Va. 194 (2000).

¹¹ *Id.*

¹² VA. CODE ANN. § 8.01-526 *et seq.* (2015).

¹³ VA. CODE ANN. § 4.1-336 (2015).

¹⁴ VA. CODE ANN. § 19.2-386.15 (2015).

¹⁵ VA. CODE ANN. § 19.2-386.16(A) (2015).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ VA. CODE ANN. § 19.2-386.16(B) (2015).

¹⁹ Id.

²⁰ VA. CODE ANN. § 19.2-386.17 (2015).

²¹ VA. CODE ANN. § 19.2-386.18 (2015).

²² VA. CODE ANN. § 19.2-386.19 (2015).

²³ VA. CODE ANN. §§ 19.2-386.20, 19.2-386.21 (2015).

²⁴ VA. CODE ANN. § 19.2-386.22 (2015). Note that real property may not be forfeited for drug offenses unless the offense carries a minimum punishment of five years or more. Id.

²⁵ VA. CODE ANN. §§ 19.2-386.27, 19.2-386.28, 19.2-386.29 (2015). Under Va. Code § 19.2-386.29, a lawful owner of a weapon subject to forfeiture shall have it returned to him if he did not know, and had no reason to know, of the illegal conduct, and is not otherwise prohibited from possessing the weapon.

²⁶ VA. CODE ANN. § 19.2-386.30 (2015).

²⁷ VA. CODE ANN. § 19.2-386.31 (2015). Note that under this forfeiture statute, the forfeiture action must be stayed “until conviction of the person whose property is subject to forfeiture.”

²⁸ VA. CODE ANN. § 19.2-386.32 (2015). Note that under this Code section, the forfeiture is dependent upon a criminal conviction first being obtained.

²⁹ VA. CODE ANN. § 19.2-386.33 (2015).

³⁰ VA. CODE ANN. § 19.2-386.34 (2015). Under this forfeiture statute, not only must there be a conviction, but also “the exhaustion of all appeals.” In addition, an immediate family member, who is not the owner of the vehicle, but who would “suffer a substantial hardship” if the sole vehicle of the immediate family were forfeited, may petition the court to release the vehicle to the family member.

³¹ VA. CODE ANN. § 19.2-386.35 (2015). Under this Code Section, the forfeiture action is stayed until conviction; if there is no conviction, the property must be returned. Also, real property may not be forfeited unless the related criminal offense carries a minimum penalty of five years or greater.

³² VA. CODE ANN. §§ 19.2-386.15, 19.2-386.22, 19.2-386.35 (2015).

³³ VA. CODE ANN. §§ 19.2-386.30, 19.2-386.31, 19.2-386.20, 19.2-386.21 (2015).

³⁴ VA. CODE ANN. § 19.2-386.29 (2015).

³⁵ VA. CODE ANN. § 19.2-386.31 (2015).

³⁶ VA. CODE ANN. § 19.2-386.32 (2015).

³⁷ *Supra* note 30. Not only is a conviction required, but the forfeiture action is stayed “until the exhaustion of all appeals.” This statute also uniquely provides for a family hardship exception to the forfeiture of the vehicle, which does not exist for any other forfeiture statute.

³⁸ *Supra* note 31. A conviction is required and the civil forfeiture action “shall be stayed until conviction.”

³⁹ However, failure to file does not invalidate the forfeiture, per Wilks, *supra* note 10.

⁴⁰ According to DCJS, only one such petition was filed in FY14.

⁴¹ The review focused on the forfeiture statutes of the fifty states and the federal government. Other sources that may impact the forfeiture proceeding, such as applicable case law, Rules of Court, and other regulations, were not an in-depth focus of the review. The final categorization of each issue was based on the general overall rule of the jurisdiction. The forfeiture statutes for each jurisdiction often contained various exceptions or caveats to the general overall rule, depending, for instance, on the type of property involved or the type of criminal activity underlying the basis for the forfeiture.

⁴² ALASKA STAT. § 17.30.112(a) (Lexis Advance 2015).

⁴³ O.C.G.A. § 9-16-15(b) (Lexis Advance 2015).

⁴⁴ HRS § 712A-11(6) (Lexis Advance 2015).

⁴⁵ 725 ILL. COMP. STAT. ANN. 150/9(J) (Lexis Advance 2015).

⁴⁶ IOWA CODE § 809A.12(14) (Lexis Advance 2015).

⁴⁷ K.S.A. § 60-4112(o) (Lexis Advance 2015).

⁴⁸ LA. R.S. § 40:2611(J) (Lexis Advance 2015).

⁴⁹ N.J. STAT. § 2C:64-4(b) (Lexis Advance 2015).

⁵⁰ OR. REV. STAT. ANN. § 2981.03(F) (Lexis Advance 2015).

⁵¹ TEX. CODE CRIM. PROC. ART. 59.05(d) (Lexis Advance 2015).

⁵² 18 U.S.C.S. § 983(a)(3)(C) (Lexis Advance 2015).

⁵³ CAL HEALTH & SAF CODE §§ 11488.4(i)(3), 11488.4(i)(4) (Lexis Advance 2015). Conviction is required to forfeit real property, vehicles and miscellaneous personal property, but conviction is not required to forfeit cash or negotiable instruments.

⁵⁴ C.R.S. 16-13-307(1.5), 16-13-307(1.7)(c) (Lexis Advance 2015). Conviction for a qualifying offense is typically required, but if the state can prove the property was instrumental to the crime, or the proceeds of a crime committed by a non-owner, and the owner is not an innocent owner, then the forfeiture can proceed without a conviction.

⁵⁵ MD. CRIMINAL PROCEDURE CODE ANN. §§ 12-103(d), 12-103(e) (Lexis Advance 2015). Conviction of requisite offense is required to forfeit the family residence.

⁵⁶ MINN. STAT. § 609.531(6a) (Lexis Advance 2015). Conviction is generally required, however forfeiture can proceed without a conviction when there is an admission to a drug offense, a deferred disposition on a drug offense or an agreement with a criminal informant.

⁵⁷ N.Y. CIVIL PRACTICE LAW § 1311(1) (Consol. Lexis Advance 2015). Conviction is generally required but the forfeiture can proceed based upon certain narcotics offenses without a conviction.

⁵⁸ See State v. Johnson, 124 N.C. App. 462, 478 S.E.2d 16, 1996 N.C. App. LEXIS 1157 (N.C. Ct. App. 1996). Under the general statute, forfeiture is *in personam* and must follow criminal conviction. *But see* N.C. GEN. STAT. §§ 75D-5(c), 75D-5(d) (Lexis Advance 2015). Forfeiture under the RICO statute is an *in rem* proceeding and a conviction is not required to proceed.

⁵⁹ TENN. CODE ANN. §§ 39-11-704(b), 40-33-101(a) (Lexis Advance 2015). Conviction is required for certain offenses in order to forfeit real property or conveyances.

⁶⁰ UTAH CODE ANN. §§ 24-4-104, 24-4-105(1), 24-4-107(4) (Lexis Advance 2015). If the State seeks forfeiture through a criminal proceeding and the defendant is acquitted, the property must be returned. However, the State may choose to pursue civil or criminal forfeiture.

⁶¹ These jurisdictions may allow minor exceptions for the forfeiture to proceed absent a conviction. Such exceptions typically require the consent of the claimant in order to proceed.

⁶² MCLS § 600.4706(1) (Lexis Advance 2015).

⁶³ § 513.617(1) R.S.MO. (Lexis Advance 2015).

⁶⁴ 44-12-207(1)(a), MCA (Lexis Advance 2015).

⁶⁵ NEV. REV. STAT. ANN. §§ 179.1173(2), 179.1173(3) (Lexis Advance 2015).

⁶⁶ RSA 318-B:17-b(IV)(d) (Lexis Advance 2015).

⁶⁷ N.M. STAT. ANN. § 31-27-4(A) (Lexis Advance 2015).

⁶⁸ OR. REV. STAT. § 131A.255(1) (Lexis Advance 2015).

⁶⁹ 18 V.S.A. § 4243(a) (Lexis Advance 2015).

⁷⁰ A.R.S. § 13-4311(M) (Lexis Advance 2015).

⁷¹ A.C.A. § 5-64-505(g)(5)(B)(i) (Lexis Advance 2015).

⁷² O.C.G.A. § 9-16-17(a)(1) (Lexis Advance 2015).

⁷³ HRS §§ 712A-10(10), 712A-12(8) (Lexis Advance 2015).

⁷⁴ IDAHO CODE ANN. §§ 37-2744(d), 37-2744A(d) (Lexis Advance 2015).

⁷⁵ IND. CODE ANN. § 34-24-1-4(a) (Lexis Advance 2015).

⁷⁶ IOWA CODE § 809A.13(7) (Lexis Advance 2015).

⁷⁷ K.S.A. § 60-4113(g) (Lexis Advance 2015).

⁷⁸ LA. R.S. § 40:2612(G) (Lexis Advance 2015).

⁷⁹ 15 M.R.S. §§ 5822(3), 5826(4)(A) (Lexis Advance 2015).

⁸⁰ See 1986 Mercedes Benz 560 CE v. State, 334 Md. 264, 638 A.2d 1164, 1994 Md. LEXIS 47 (Md. 1994).

⁸¹ MCLS § 600.4707(6) (Lexis Advance 2015).

⁸² MISS. CODE ANN. § 41-29-179(2) (Lexis Advance 2015).

⁸³ See State v. 5708 Paseo, 896 S.W.2d 532, 1995 Mo. App. LEXIS 782 (Mo. Ct. App. 1995).

⁸⁴ RSA 318-B:17-b(IV)(b) (Lexis Advance 2015).

⁸⁵ See State v. Seven Thousand Dollars, 136 N.J. 223, 642 A.2d 967, 1994 N.J. LEXIS 497 (N.J. 1994).

⁸⁶ O.R.C. ANN. 2981.03(A)(5)(a), 2981.04(B), 2981.05(D) (Lexis Advance 2015).

⁸⁷ 63 OKL. ST. §§ 2-503(B), 2-503(C), 2-503(G) (Lexis Advance 2015).

⁸⁸ See Commonwealth v. Fid. Bank Accounts, 158 Pa. Commw. 109, 631 A.2d 710, 1993 Pa. Commw. LEXIS 530 (Pa. Commw. Ct. 1993).

⁸⁹ TEX. CODE CRIM. PROC. ART. 59.05(b) (Lexis Advance 2015).

⁹⁰ VA. CODE ANN. § 19.2-386.10(A) (2015).

⁹¹ REV. CODE WASH. (ARCW) § 69.50.505(5) (Lexis Advance 2015).

⁹² W. VA. CODE § 60A-7-705(e) (Lexis Advance 2015).

⁹³ 18 U.S.C.S. § 983(c)(1) (Lexis Advance 2015).

- ⁹⁴ See Resek v. State, 706 P.2d 288, 1985 Alas. LEXIS 300 (Alaska 1985).
- ⁹⁵ See Brown v. State, 721 A.2d 1263, 1998 Del. LEXIS 494 (Del. 1998).
- ⁹⁶ 725 ILCS 150/9(G) (Lexis Advance 2015).
- ⁹⁷ ALM GL ch. 94C, § 47(d) (Lexis Advance 2015).
- ⁹⁸ N.D. CENT. CODE, § 19-03.1-36.6 (Lexis Advance 2015).
- ⁹⁹ R.I. GEN. LAWS § 21-28-5.04.2(p) (Lexis Advance 2015).
- ¹⁰⁰ See Medlock v. One 1985 Jeep Cherokee, 322 S.C. 127, 470 S.E.2d 373, 1996 S.C. LEXIS 64 (S.C. 1996).
- ¹⁰¹ S.D. CODIFIED LAWS § 34-20B-88 (Lexis Advance 2015).
- ¹⁰² See State v. Eleven Thousand Three Hundred Forty-Six Dollars & No Cents in United States Currency, 777 P.2d 65, 1989 Wyo. LEXIS 168, 1 A.L.R.5th 1057 (Wyo. 1989).
- ¹⁰³ See Wherry v. State ex rel. Brooks, 637 So. 2d 1353, 1994 Ala. Civ. App. LEXIS 78 (Ala. Civ. App. 1994).
- ¹⁰⁴ WIS. STAT. § 961.555(3) (Lexis Advance 2015).
- ¹⁰⁵ COLO. REV. STAT. § 16-13-303(5.1)(a), 16-13-504(2.1)(a) (Lexis Advance 2015).
- ¹⁰⁶ CONN. GEN. STAT. § 54-36h(b) (Lexis Advance 2015).
- ¹⁰⁷ FLA. STAT. § 932.704(8) (Lexis Advance 2015).
- ¹⁰⁸ MINN. STAT. § 609.531(6a)(d) (Lexis Advance 2015).
- ¹⁰⁹ MONT. CODE ANN. § 44-12-207(1)(c) (Lexis Advance 2015).
- ¹¹⁰ NEV. REV. STAT. ANN. § 179.1173(4) (Lexis Advance 2015).
- ¹¹¹ N.M. STAT. ANN. § 31-27-4(A)(3) (Lexis Advance 2015).
- ¹¹² 18 V.S.A. §§ 4243(c), 4244(e) (Lexis Advance 2015).
- ¹¹³ R.R.S. NEB. § 28-431(4) (Lexis Advance 2015).
- ¹¹⁴ See State v. Johnson, 124 N.C. App. 462, 478 S.E.2d 16, 1996 N.C. App. LEXIS 1157 (N.C. Ct. App. 1996).
- ¹¹⁵ CAL HEALTH & SAF CODE § 11488.4(i)(4) (Lexis Advance 2015).
- ¹¹⁶ CAL HEALTH & SAF CODE §§ 11488.4(i)(1), 11488.4(i)(2) (Lexis Advance 2015).
- ¹¹⁷ See Smith v. Commonwealth, 339 S.W.3d 485, 2010 Ky. App. LEXIS 166 (Ky. Ct. App. 2010).
- ¹¹⁸ KRS § 218A.410(1)(j) (Lexis Advance 2015).
- ¹¹⁹ N.Y. CIVIL PRACTICE LAW §§ 1311(3)(a), 1311(3)(b)(ii), 1311(3)(b)(iii), 1311(3)(b)(iv) (Lexis Advance 2015).
- ¹²⁰ N.Y. CIVIL PRACTICE LAW § 1311(b)(v) (Lexis Advance 2015).
- ¹²¹ OR. REV. STAT. § 131A.255(3) (Lexis Advance 2015).
- ¹²² TENN. CODE ANN. §§ 39-11-708(c), 39-11-708(d), 40-33-107(4) (Lexis Advance 2015).
- ¹²³ TENN. CODE ANN. § 53-11-452(d)(1)(E) (Lexis Advance 2015).
- ¹²⁴ UTAH CODE ANN. § 24-4-104(6) (Lexis Advance 2015).
- ¹²⁵ UTAH CODE ANN. § 24-4-105(4)(b) (Lexis Advance 2015).
- ¹²⁶ ALASKA STAT. §§ 17.30.110(4)(A), 17.30.110(4)(B) (Lexis Advance 2015). See also, Resek v. State, 706 P.2d 288 (Alaska 1985).
- ¹²⁷ A.R.S. § 13-4310(D) (Lexis Advance 2015).
- ¹²⁸ A.C.A. § 5-64-505(a)(6)(B) (Lexis Advance 2015).
- ¹²⁹ FLA. STAT. § 932.703(6) (Lexis Advance 2015).
- ¹³⁰ HAW. REV. STAT. §§ 712A-10(10), 712A-12(8) (Lexis Advance 2015).
- ¹³¹ IDAHO CODE § 37-2744(d) (Lexis Advance 2015).
- ¹³² 725 ILL. COMP. STAT. 150/8, 150/9(G) (Lexis Advance 2015).
- ¹³³ IND. CODE ANN. §§ 34-24-1-1(b), 34-24-1-1(c), 34-24-1-1(e), 34-24-1-4(a) (Lexis Advance 2015).
- ¹³⁴ IOWA CODE § 809A.13(7) (Lexis Advance 2015).
- ¹³⁵ K.S.A. § 60-4113(g) (Lexis Advance 2015).
- ¹³⁶ LA. R.S. § 40:2612(H) (Lexis Advance 2015).
- ¹³⁷ 15 M.R.S. §§ 5821(3-A), 5821(7)(A), 5822(3) (Lexis Advance 2015).
- ¹³⁸ MD. CRIMINAL PROCEDURE CODE ANN. § 12-103(a) (Lexis Advance 2015).
- ¹³⁹ MCLS §§ 600.4707(6), 600.4707(7) (Lexis Advance 2015).
- ¹⁴⁰ NEB. REV. STAT. ANN. § 28-431(4) (Lexis Advance 2015).
- ¹⁴¹ N.H. REV. STAT. ANN. § 318-B:17-b(IV)(b) (Lexis Advance 2015).
- ¹⁴² N.J. STAT. § 2C:64-5(b) (Lexis Advance 2015).
- ¹⁴³ N.D. CENT. CODE, § 19-03.1-36.7 (Lexis Advance 2015).
- ¹⁴⁴ OR. REV. STAT. ANN. § 2981.04(B) (Lexis Advance 2015).

- ¹⁴⁵ R.I. GEN. LAWS § 21-28-5.04.2(p) (Lexis Advance 2015).
- ¹⁴⁶ S.C. CODE ANN. § 44-53-586(b) (Lexis Advance 2015).
- ¹⁴⁷ S.D. CODIFIED LAWS § 34-20B-80 (Lexis Advance 2015).
- ¹⁴⁸ TEX. CODE CRIM. PROC. ART. 59.02(c), 59.02(h)(1) (Lexis Advance 2015).
- ¹⁴⁹ VA. CODE ANN. § 19.2-386.10(A) (Lexis Advance 2015).
- ¹⁵⁰ See Escamilla v. Tri-City Task Force, 100 Wn. App. 742, 999 P.2d 625, 2000 Wash. App. LEXIS 720 (Wash. Ct. App. 2000).
- ¹⁵¹ 18 U.S.C.S. § 983(d)(1) (Lexis Advance 2015).
- ¹⁵² COLO. REV. STAT. § 16-13-303(5.1)(a), 16-13-504(2.1)(a) (Lexis Advance 2015).
- ¹⁵³ MINN. STAT. § 609.531(6a)(d) (Lexis Advance 2015).
- ¹⁵⁴ MONT. CODE ANN. § 44-12-211(2)(b) (Lexis Advance 2015).
- ¹⁵⁵ N.M. STAT. ANN. §§ 31-27-7.1(D), 31-27-7.1(F) (Lexis Advance 2015).
- ¹⁵⁶ CAL HEALTH & SAF CODE § 11488.4(i)(4) (Lexis Advance 2015).
- ¹⁵⁷ CAL HEALTH & SAF CODE §§ 11488.4(i)(1), 11488.4(i)(2) (Lexis Advance 2015).
- ¹⁵⁸ KY. REV. STAT. ANN. § 218A.460(4) (Lexis Advance 2015).
- ¹⁵⁹ KY. REV. STAT. ANN. § 218A.410(1)(j) (Lexis Advance 2015).
- ¹⁶⁰ N.Y. CIVIL PRACTICE LAW §§ 1311(3)(b)(ii), 1311(3)(b)(iii), 1311(3)(b)(iv) (Lexis Advance 2015).
- ¹⁶¹ N.Y. CIVIL PRACTICE LAW § 1311(3)(b)(v) (Lexis Advance 2015).
- ¹⁶² OR. REV. STAT. § 131A.255(3) (Lexis Advance 2015).
- ¹⁶³ OR. REV. STAT. § 131A.255(5) (Lexis Advance 2015).
- ¹⁶⁴ OR. REV. STAT. § 131A.255(3) (Lexis Advance 2015).
- ¹⁶⁵ UTAH CODE ANN. § 24-4-105(10)(f) (Lexis Advance 2015).
- ¹⁶⁶ UTAH CODE ANN. § 24-4-104(6) (Lexis Advance 2015).
- ¹⁶⁷ UTAH CODE ANN. § 24-4-105(4)(b) (Lexis Advance 2015).
- ¹⁶⁸ 18 V.S.A. § 4244(d) (Lexis Advance 2015).
- ¹⁶⁹ 18 V.S.A. §§ 4243(c), 4244(e) (Lexis Advance 2015).
- ¹⁷⁰ ALASKA STAT. §§ 17.30.110(4)(A), 17.30.110(4)(B) (Lexis Advance 2015). See also Resek v. State, 706 P.2d 288 (Alaska 1985).
- ¹⁷¹ A.R.S. § 13-4310(D) (Lexis Advance 2015).
- ¹⁷² A.C.A. §§ 5-64-505(a)(4), 5-64-505(a)(6), 5-64-505(a)(8) (Lexis Advance 2015).
- ¹⁷³ DEL. CODE ANN. tit. 16, § 4785(a) (Lexis Advance 2015).
- ¹⁷⁴ O.C.G.A. § 16-13-50(a) (Lexis Advance 2015).
- ¹⁷⁵ HAW. REV. STAT. ANN. §§ 712A-10(10), 712A-12(8) (Lexis Advance 2015).
- ¹⁷⁶ IDAHO CODE § 37-2745(a) (Lexis Advance 2015).
- ¹⁷⁷ 725 ILL. COMP. STAT. 150/8, 150/9(G) (Lexis Advance 2015).
- ¹⁷⁸ IOWA CODE § 809A.13(7) (Lexis Advance 2015).
- ¹⁷⁹ K.S.A. § 60-4113(g) (Lexis Advance 2015).
- ¹⁸⁰ LA. R.S. § 40:2612(H) (Lexis Advance 2015).
- ¹⁸¹ MD. CODE ANN. CRIM. PROC. § 12-103(a) (Lexis Advance 2015).
- ¹⁸² ALM GL ch. 94C, § 47(d) (Lexis Advance 2015).
- ¹⁸³ MISS. CODE ANN. § 41-29-179(3) (Lexis Advance 2015).
- ¹⁸⁴ MO. REV. STAT. § 195.140(2)(1) (Lexis Advance 2015).
- ¹⁸⁵ NEB. REV. STAT. ANN. §§ 28-431(4), 28-432(1) (Lexis Advance 2015).
- ¹⁸⁶ NEV. REV. STAT. ANN. § 179.1173(8) (Lexis Advance 2015).
- ¹⁸⁷ N.H. REV. STAT. ANN. § 318-B:17-b(IV)(b) (Lexis Advance 2015).
- ¹⁸⁸ N.J. STAT. § 2C:64-5(b) (Lexis Advance 2015).
- ¹⁸⁹ N.C. GEN. STAT. § 90-113.1(a) (Lexis Advance 2015).
- ¹⁹⁰ N.D. CENT. CODE, §§ 19-03.1-36.6, 19-03.1-37(1) (Lexis Advance 2015).
- ¹⁹¹ OKLA. STAT. tit. 63 § 2-506(H) (Lexis Advance 2015).
- ¹⁹² 42 PA.C.S. § 6802(j) (Lexis Advance 2015).
- ¹⁹³ R.I. GEN. LAWS § 21-28-5.04.2(p) (Lexis Advance 2015).
- ¹⁹⁴ S.C. CODE ANN. §§ 44-53-540(a), 44-53-586(b) (Lexis Advance 2015).
- ¹⁹⁵ S.D. CODIFIED LAWS § 34-20B-88 (Lexis Advance 2015).
- ¹⁹⁶ TENN. CODE ANN. §§ 53-11-451(a)(4)(B), 53-11-451(a)(6)(B) (Lexis Advance 2015).
- ¹⁹⁷ TEX. CODE CRIM. PROC. ART. 59.02(c), 59.02(h)(1) (Lexis Advance 2015).

- ¹⁹⁸ VA. CODE ANN. § 19.2-386.10(A) (2015).
- ¹⁹⁹ WASH. REV. CODE ANN. §§ 69.50.505(1)(d)(ii), 69.50.505(1)(g), 69.50.506(a) (Lexis Advance 2015).
- ²⁰⁰ W. VA. CODE §§ 60A-7-703(a)(5)(i), 60A-7-703(a)(7), 60A-7-703(a)(8) (Lexis Advance 2015).
- ²⁰¹ WIS. STAT. § 961.56(1) (Lexis Advance 2015).
- ²⁰² WYO. STAT. § 35-7-1050(a) (Lexis Advance 2015).
- ²⁰³ 18 U.S.C.S. § 983(d)(1) (Lexis Advance 2015).
- ²⁰⁴ CAL HEALTH & SAF CODE § 11488.5(d)(1) (Lexis Advance 2015).
- ²⁰⁵ COLO. REV. STAT. § 16-13-303(5.2)(c), 16-13-504(2.2)(c) (Lexis Advance 2015).
- ²⁰⁶ CONN. GEN. STAT. § 54-36h(c) (Lexis Advance 2015).
- ²⁰⁷ FLA. STAT. § 932.703(6) (Lexis Advance 2015).
- ²⁰⁸ IND. CODE ANN. §§ 34-24-1-1(b), 34-24-1-1(c), 34-24-1-1(e), 34-24-1-4(a) (Lexis Advance 2015).
- ²⁰⁹ MICH. COMP. LAWS SERV. § 600.4707(6)(b) (Lexis Advance 2015). Generally the burden is on the State. *But see* MICH. COMP. LAWS SERV. § 600.4707(7) (Lexis Advance 2015), which places the burden on the claimant if the property was transferred after the criminal conduct giving rise to the forfeiture occurred.
- ²¹⁰ MINN. STAT. §§ 609.531(6a)(d), 609.5318(1)(a) (Lexis Advance 2015).
- ²¹¹ MONT. CODE ANN. § 44-12-211(2)(b) (Lexis Advance 2015).
- ²¹² N.M. STAT. ANN. §§ 31-27-7.1(D), 31-27-7.1(F) (Lexis Advance 2015).
- ²¹³ N.Y. CIV. PRACTICE LAW §§ 1311(3)(b)(ii), 1311(3)(b)(iii), 1311(3)(b)(iv), 1311(3)(b)(v) (Lexis Advance 2015).
- ²¹⁴ OR. REV. STAT. § 2981.04(E)(2)(c) (Lexis Advance 2015).
- ²¹⁵ CODE OF ALA. § 20-2-93(h) (Lexis Advance 2015).
- ²¹⁶ KY. REV. STAT. ANN. § 218A.410(1)(k) (Lexis Advance 2015).
- ²¹⁷ KY. REV. STAT. ANN. § 218A.460(4) (Lexis Advance 2015).
- ²¹⁸ KY. REV. STAT. ANN. § 218A.410(1)(j) (Lexis Advance 2015).
- ²¹⁹ ME. REV. STAT. tit. 15, § 5821(7)(A) (Lexis Advance 2015).
- ²²⁰ ME. REV. STAT. tit. 15, §§ 5821(3-A), 5822(3) (Lexis Advance 2015).
- ²²¹ OR. REV. STAT. § 131A.255(3) (Lexis Advance 2015).
- ²²² OR. REV. STAT. § 131A.255(5) (Lexis Advance 2015).
- ²²³ UTAH CODE ANN. § 24-4-107(2) (Lexis Advance 2015).
- ²²⁴ UTAH CODE ANN. § 24-4-105(4)(a) (Lexis Advance 2015).
- ²²⁵ UTAH CODE ANN. § 24-4-105(10)(f) (Lexis Advance 2015).
- ²²⁶ 18 V.S.A. §§ 4243(c), 4244(e) (Lexis Advance 2015).
- ²²⁷ 18 V.S.A. § 4244(d) (Lexis Advance 2015).
- ²²⁸ ALASKA STAT. § 17.30.116(c) (Lexis Advance 2015).
- ²²⁹ A.R.S. § 13-4310(I) (Lexis Advance 2015).
- ²³⁰ O.C.G.A. § 9-16-15(a) (Lexis Advance 2015).
- ²³¹ IOWA CODE § 809A.12(15) (Lexis Advance 2015).
- ²³² MISS. CODE ANN. § 41-29-179(1) (Lexis Advance 2015).
- ²³³ N.H. REV. STAT. ANN. § 318-B:17-b(IV)(d) (Lexis Advance 2015).
- ²³⁴ N.J. STAT. § 2C:64-3(f) (Lexis Advance 2015).
- ²³⁵ OR. REV. STAT. § 131A.265(2) (Lexis Advance 2015).
- ²³⁶ VA. CODE ANN. § 19.2-386.10 (Lexis Advance 2015).
- ²³⁷ 18 U.S.C.S. §§ 981(g)(1), 981(g)(2) (Lexis Advance 2015).
- ²³⁸ HAW. REV. STAT. § 712A-11(8) (Lexis Advance 2015).
- ²³⁹ 725 ILL. COMP. STAT. ANN. 150/9(J) (Lexis Advance 2015).
- ²⁴⁰ KAN. STAT. ANN. § 60-4112(p) (Lexis Advance 2015).
- ²⁴¹ LA. REV. STAT. ANN. § 40:2611(J) (Lexis Advance 2015).
- ²⁴² MASS. ANN. LAWS ch. 94C, § 47(d) (Lexis Advance 2015).
- ²⁴³ UTAH CODE ANN. § 24-4-105(6)(b) (Lexis Advance 2015). Provides for a stay of the sale or disposition of the property on the claimant's motion.
- ²⁴⁴ WIS. STAT. § 961.555(2)(a) (Lexis Advance 2015).
- ²⁴⁵ A mandatory stay appears to be available to both the State and the claimant in the jurisdictions listed.
- ²⁴⁶ CAL HEALTH & SAF CODE § 11488.5(e) (Lexis Advance 2015).
- ²⁴⁷ COLO. REV. STAT. § 16-13-505(1.5) (Lexis Advance 2015).

- ²⁴⁸ MD. CODE ANN., CRIM. PROC. § 12-311 (Lexis Advance 2015). Provides for a stay of the forfeiture during the criminal appeal of a conviction which is the prerequisite for forfeiture of the principal family residence.
- ²⁴⁹ MO. REV. STAT. § 513.617(1) (Lexis Advance 2015).
- ²⁵⁰ NEV. REV. STAT. ANN. § 179.1173(2) (Lexis Advance 2015).
- ²⁵¹ N.Y. CIVIL PRACTICE LAW §§ 1311(1)(a), 1311(1)(b) (Lexis Advance 2015).
- ²⁵² TENN. CODE ANN. §§ 39-11-710(g), 53-11-452(e)(1) (Lexis Advance 2015).
- ²⁵³ ALA. CODE § 28-4-289 (Lexis Advance 2015). Provides for court costs in regard to a conveyance.
- ²⁵⁴ IOWA CODE § 809A.12(7) (Lexis Advance 2015). Provides for attorney fees.
- ²⁵⁵ OR. REV. STAT. §§ 131A.245, 131A.310(1), 131A.310(2) (Lexis Advance 2015). Provides for towing, storage costs and attorney fees.
- ²⁵⁶ UTAH CODE ANN. § 24-4-110 (Lexis Advance 2015). Provides for attorney fees.
- ²⁵⁷ VA. CODE ANN. § 19.2-386.12(B) (2015). Provides for attorney fees.
- ²⁵⁸ WASH. REV. CODE ANN. § 69.50.505(6) (Lexis Advance 2015). Provides for attorney fees.
- ²⁵⁹ COLO. REV. STAT. § 16-13-505(1.6) (Lexis Advance 2015). Exempt from storage and preservation costs.
- ²⁶⁰ NEB. REV. STAT. ANN. § 28-431(4) (Lexis Advance 2015). Exempt from court costs, fees and storage expenses.
- ²⁶¹ ARIZ. REV. STAT. § 13-4314(E) (Lexis Advance 2015). Costs are awarded if no reasonable cause.
- ²⁶² HAW. REV. STAT. ANN. § 712A-15(4) (Lexis Advance 2015). Costs are awarded if no reasonable cause.
- ²⁶³ N.Y. CIVIL PROCEDURE LAW § 1318(4) (Lexis Advance 2015). Costs and attorney fees are awarded if no reasonable cause or a lack of good faith in regard to motions for attachment.
- ²⁶⁴ R.I. GEN. LAWS § 21-28-5.04.2(o) (Lexis Advance 2015). Costs are awarded if no reasonable cause.
- ²⁶⁵ FLA. STAT. §§ 932.704(9)(a), 932.704(9)(b), 932.704(10) (Lexis Advance 2015). Provides that no towing, storage, or administrative costs are charged. The owner is reimbursed for loss in value and/or loss of income from seized property. Attorney fees are awarded if no probable cause existed for seizure. If probable cause existed, attorney fees are awarded if lack of good faith or a gross abuse by the seizing agency.
- ²⁶⁶ LA. R.S. §§ 40:2611(L), 40:2615(D) (Lexis Advance 2015). Attorney fees may be awarded. Claimant is exempted from storage or preservation fees. Costs are awarded if no reasonable cause.
- ²⁶⁷ MINN. STAT. §§ 609.5312(1a)(c), 609.5312(3)(c), 609.5312(4)(c), 609.5314(3)(d), 609.5318(4)(b) (Lexis Advance 2015). Claimant is exempted from costs and shall be reimbursed for filing fees. Attorney fees and costs may be awarded.
- ²⁶⁸ N.M. STAT. ANN. §§ 31-27-6(F), 31-27-10 (Lexis Advance 2015). Claimant is exempted from storage costs. State is liable for any damages, fees or costs related to returned property.
- ²⁶⁹ IOWA CODE § 809A.12(7) (Lexis Advance 2015).
- ²⁷⁰ OR. REV. STAT. §§ 131A.245, 131A.310(1) (Lexis Advance 2015).
- ²⁷¹ UTAH CODE ANN. § 24-4-110 (Lexis Advance 2015).
- ²⁷² VA. CODE ANN. § 19.2-386.12(B) (2015).
- ²⁷³ WASH. REV. CODE ANN. § 69.50.505(6) (Lexis Advance 2015).
- ²⁷⁴ FLA. STAT. § 932.704(10) (Lexis Advance 2015).
- ²⁷⁵ LA. REV. STAT. ANN. § 40:2611(L) (Lexis Advance 2015).
- ²⁷⁶ MINN. STAT. § 609.5318(4)(b) (Lexis Advance 2015).
- ²⁷⁷ N.Y. CIVIL PROCEDURE LAW § 1318(4) (Lexis Advance 2015). Attorney fees in this instance are limited to matters involving motions for attachment and the affidavits related to said motions.
- ²⁷⁸ Retrieved from www.justice.gov/afp.
- ²⁷⁹ 21 U.S.C. § 881(e)(1)(A) and (e)(3) (Lexis 2015); 18 U.S.C. § 981 (e)(2) (Lexis 2015); and 19 U.S.C. § 1616a (Lexis 2015) provide for this authorization.
- ²⁸⁰ In FY14, 42 states received \$1 million or more in disbursements. The lowest disbursement received by a state in FY14 was South Dakota with a total of \$500.
- ²⁸¹ See Meier, B. (May 11, 2007). U.S. maker of OxyContin painkiller to pay \$600 million in guilty plea, *The New York Times*.
- ²⁸² See The Bipartisan Budget Act of 2015 (P.L. 114-74) enacted in November 2015.
- ²⁸³ See the Consolidated Appropriations Act of 2016, signed December 18, 2015.
- ²⁸⁴ See U.S. Dep't. of Justice (2015). *Letter to State, Local and Tribal Law Enforcement Agencies*, December 21, 2015. Available at: <http://www.justice.gov/criminal-afmls/file/801381/download>. The deferment was effective immediately.
- ²⁸⁵ Retrieved from <https://www.justice.gov/criminal-afmls/file/835606/download>.

²⁸⁶ Retrieved from <https://www.treasury.gov/about/organizational-structure/offices/9742000Pages/The-Executive-Office-for-Asset-Forfeiture.aspx>.

²⁸⁷ Retrieved from <http://www.dcjs.virginia.gov/fasp/stats.cfm> (data retrieved January 26, 2016).

²⁸⁸ According to DCJS staff, the minimum threshold for reporting has increased over the years to manage the volume of seized items. The current threshold of \$500 has worked well for both participating agencies and DCJS' ability to manage the process of maintaining detailed information.

²⁸⁹ A review of all of the itemized accounts of forfeitures under \$500 for all participating agencies reveals that these comprised a very small percentage of overall forfeiture amounts.

²⁹⁰ Many of the sharing agreements provide that 80% of the share goes to the law enforcement agency and 20% goes to the Commonwealth's Attorney's Office; however, some prosecutors receive shares as low as 10% to as high as 45%. Some agreements provide prosecutors with an increased share (e.g., 50/50) if the case results in a trial or involves real estate. Task Force sharing agreements are far more complex as they involve multiple agencies and various share percentages.

²⁹¹ The "other" category includes a wide array of items, but frequently includes ATVs, utility trailers, and clothing items, for example.

²⁹² The administrative/other category has a different explanation for each case. Common explanations include duplicate entries and old cases that were never properly closed by the submitting agency.

²⁹³ Staff found that vehicles likely have a lower forfeiture rate because they are often a more complicated item to seize and forfeit for a number of reasons, such as innocent owner or lienholder claims, high liens on the vehicle making the forfeiture cost ineffective, or settlement negotiations involving currency and the vehicle, where the owner agrees to not contest the currency seizure in return for having his vehicle returned to him.

²⁹⁴ These two trials were bench trials. One trial involved the actual defendant while the other trial involved another party claiming interest in the item. In both trials, the courts entered verdicts in favor of the Commonwealth.

²⁹⁵ The 352 participating agencies included 224 law enforcement agencies, 109 Commonwealth's Attorneys' Offices, and 19 Drug Task Forces.

²⁹⁶ The primary reason for lack of Commonwealth's Attorney Office participation is that they simply did not have any cross-designated attorneys; their respective U.S. Attorney's Offices handled such cases.

²⁹⁷ For offices that do require a conviction, it is often with the understanding that they may have already filed an information *before* the defendant's conviction.

²⁹⁸ External audits are conducted by entities such as county/city auditors or independent auditing firms. DCJS requires annual audits and certifications as well.