

**STATE OF NEW JERSEY -
FORFEITURE PROGRAM ADMINISTRATION
STANDARD OPERATING PROCEDURE**



12

Title: ***Distribution of Forfeited Property to Participating Law Enforcement Agencies***

Date Issued: **03/01/98**

Applicability: **All Law Enforcement Personnel**

Supersedes: **N.J.A.C. 13:77.1 et. seq.**

12:1 Policy Statement

This standard operating procedure governs the division and distribution of property forfeited pursuant to N.J.S.A. 2C:64-1 et seq. The standard is promulgated to provide guidance and prior notice regarding the procedures governing the equitable distribution, use and accountability of law enforcement agencies for such property in accordance with the statutory intent. When property is forfeited as a result of the combined efforts of more than one law enforcement agency, each law enforcement agency contributing to the forfeiture is to share proportionately in the forfeiture proceeds. Where property cannot be divided, the general policy is to sell the property and divide the proceeds among all participating law enforcement agencies in a manner which will enhance law enforcement efforts and cooperation. All forfeited property, and all funds derived from the sale, auction or other disposition of said property shall be used solely for law enforcement purposes. This standard is intended to further these general purposes and shall be interpreted accordingly.

- A. The prosecuting agency shall determine the contributive share to be apportioned to each participating law enforcement agency, including that of the prosecuting agency itself.
- B. The prosecuting agency shall divide the forfeited property or its proceeds equitably and fairly, and in accordance with these standards, with any law enforcement agency, for that agency's use, where the law enforcement agency participated in the surveillance, investigation, arrest or prosecution which resulted in the forfeiture.
- C. The funding entity shall fully credit the participating law enforcement agency with its contributive share of the forfeited property, which share is to be dedicated solely for law enforcement purposes in accordance with these standards.

12:2 Legal authority

- A. Under N.J.S.A. 2C:64-6 and N.J.S.A. 2C:64-7, the Attorney General or the county prosecutor, whichever is the prosecuting agency, shall divide the forfeited property according to each law enforcement agency's contribution to the surveillance, investigation, arrest or prosecution which resulted in the forfeiture.
- B. These standards are promulgated pursuant to the authority of the Attorney General, as the State's Chief law enforcement officer, to provide for the general supervision of criminal justice throughout the State.

12:3 Delegation of authority of Attorney General in apportionment

Where the Attorney General is the prosecuting agency, the Director of the Division of Criminal Justice is designated to act on behalf of the Attorney General in determining the relative contributions of participating law enforcement agencies so that an equitable division of forfeited property can be made. Further, the Director of the Division of Criminal Justice shall be directly responsible for the general administration, execution and compliance of the standards governing forfeiture by all law enforcement agencies within the State.

12:4 Definitions

The following words and terms when used in the Forfeiture Program Administration Standard Operating Procedures, shall have the following meanings, unless the context clearly indicated otherwise:

- A. "Contributive share" means the proportionate share of forfeited property which is allocated by the prosecuting agency in the exercise of its discretion to any participating law enforcement agency based on the participating law enforcement agency's relative contribution to the surveillance, investigation, arrest or prosecution.
- B. "Entity" means the funding entity or entity having budgetary control over a participating law enforcement agency. In the case of the State law enforcement agency, that entity shall be the State Treasury.
- C. "Forfeited property" means property, proceeds and monies seized and subject to a confirming final judgment pursuant to N.J.S.A. 2C:64-3.
- D. "Forfeiture records" means the financial documentation and case files maintained in the regular course of business which relates to, and accounts for, the seizure, forfeiture and/or disposition of prima facie contraband and/or property under the authority of N.J.S.A. 2C:64-1 et seq.

- E. "Investigative unit" means a State law enforcement investigative agency, bureau, division, section or other unit that engages in criminal investigation, surveillance or arrests and which is under the control, direction or supervision of the Attorney General in the Department of Law and Public Safety.
- F. "Law enforcement purpose" means a purpose which is calculated to enhance a law enforcement agency's ability to conduct criminal investigations, surveillance, arrests and prosecutions and to respond more fully to the effects of crime and, for purposes of these rules, shall be beyond that allocated by the law enforcement agency's annual budget. A law enforcement purpose shall include expenditures to defray the costs of protracted or complex investigations; to educate the public in crime prevention techniques; to provide additional technical assistance or expertise, which may, for example, include participation in funding the purchase of Statewide automated fingerprint identification equipment, an automated uniform offense and arrest report system, the purchase of surveillance and undercover transportation and investigation equipment, and computer hardware and software to enhance the coordination and sharing of information among the law enforcement agencies of a county and the State; to provide matching funds to obtain Federal law enforcement enhancement grants, or for such other purposes as the Attorney General may from time to time authorize.
- G. "Participating law enforcement agency" means a law enforcement agency, including, but not limited to, a New Jersey State investigative unit, a county multi-agency strike force or task force, county prosecutor's office, county or local police agency, law enforcement agencies of the United States Government and law enforcement agencies of State and local jurisdictions outside the State of New Jersey which substantially contributes to the surveillance, investigation, arrest or prosecution which results in a forfeiture.
- H. "Prosecuting agency" means either the Attorney General or the county prosecutor, whichever in a particular case bears the responsibilities for prosecuting the defendant or filing the forfeiture action.
- I. "State law enforcement agency" means any department of the State which by itself or through any subordinate investigative unit or other agency, which it controls, directs or supervises, engages in law enforcement activities through State personnel that are sworn police officers. The Department of Law and Public Safety shall be the State law enforcement agency for all investigative activity conducted by its investigative units.

12:5 Distribution of Contraband

Property defined in N.J.S.A. 2C:64-1 as Prima Facie Contraband, which has been

forfeited shall be destroyed if it can serve no lawful purpose or it presents a danger to the public health, safety or welfare.

- A. Before Prima Facie Contraband can be used by a law enforcement agency, a written request shall be made to, and approved by, the Division of Criminal Justice, Operations Bureau. The request shall state the law enforcement purpose, (as defined in SOP12:4 (f)), duration of use and the law enforcement agency that shall maintain custody and control over the property. When the property is no longer useful to the law enforcement agency, it shall be destroyed.

12:6 Property forfeited that contains or displays any counterfeit copyright, trademark or registration

Property forfeited which contains or displays any counterfeit brand name, insignia, design feature or any other identifiable feature which is protected by United States copyright, trademark or registration shall be either: 1) destroyed, or; 2) returned to the owner of the copyright, trademark or registration. In lieu of receiving the forfeited property, the owner of the copyright, trademark or registration may provide written consent to the donation of the forfeited property to any charitable or non-profit organization operating within the State. The charitable or non-profit organization that receives forfeited property under this provision, shall use the property in order to fulfil the mission of the organization and shall not sell the forfeited property to any person or entity.

12:7 Law Enforcement Trust Fund for prosecuting agency

All forfeited property other than contraband, or any proceeds resulting from the forfeiture and all monies seized or forfeited, shall become the property of the entity funding the prosecuting agency effecting the forfeiture, and shall, if feasible, be placed in a dedicated Law Enforcement Trust Fund established by that entity, as outlined by the Forfeiture Program Administration Model Standard Operating Procedures.

12:8 Contributive Share

After deductions are made for security interests and asset maintenance and forfeiture prosecution costs, payments shall be made from the SADA or SATA to the participating law enforcement agency-State, county, local or other, where the law enforcement agency contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to that agency's relative contribution as determined by the prosecuting agency. Payment shall be made to the Law Enforcement Trust Fund established for the participating law enforcement agency.

12:9 Use of Forfeiture Funds

- A. Moneys in AGLEFA, a CLETA, a MLETA or a MEA shall only be used for law enforcement purposes, as defined in this standard operating procedure. All

expenditures are subject to certification of availability by the funding entity, which certification should not be unreasonably and ultimately withheld. Forfeiture funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency. No funding entity shall anticipate forfeitures or proceeds therefrom in the adoption and approval of the budget for its law enforcement agency.

- B. Forfeiture funds may not be used for payment of regular salaries or to create new personnel positions, to pay dues or fees in an organization that represents any interest other than a law enforcement interest, such as a bar association, or to pay any expense imposed as a condition of maintaining professional standing, such as the FAIR Act Attorney Fee. If approved by the Division of Criminal Justice, Deputy Director - Operations, forfeiture funds may be used to pay the salaries of temporary employees hired for a specific function, such as persons with a special expertise which is needed for a particular investigation. Funds may be expended from a MLETA or MEA only upon the request of the participating law enforcement agency, to the appropriate county prosecutor accompanied by a written certification that the request complies with the provisions of these standard operating procedures, and only upon appropriation to the participating law enforcement agency in accordance with the accepted budgetary provisions of its funding entity. No expenditure shall be made from either a CLETA, a MLETA or MEA without the approval of the appropriate county prosecutor. Any expenditure of forfeiture funds, like the expenditure of other public funds, shall be subject to the public bidding requirements imposed upon the funding entity.

12:10 Disposal of indivisible forfeited property

Where forfeited property, including motor vehicles, cannot be divided as required by N.J.S.A. 2C:64-7, the general policy of this State shall be to sell the property and divide the proceeds as set forth in this standard operating procedure rather than to retain the property for law enforcement use. Where, however, full value cannot be obtained for indivisible forfeited property and where the property is needed for a law enforcement purpose, the prosecuting agency effecting the forfeiture may determine to retain the forfeited property for official use.

12:11 Procedures for disposing indivisible forfeited property

If the prosecuting agency decides to distribute indivisible forfeited property to a participating law enforcement agency, the participating law enforcement agency must reimburse the entity funding the prosecuting agency for any moneys that were expended by that entity in furtherance of securing a perfected interest in or clear title to the forfeited property. If the participating law enforcement agency does not agree to such reimbursement, or if other agreement cannot be reached by all interests parties, the forfeited property shall be sold and the proceeds shall be distributed as set forth in this standard operating procedure.

12:12 Procedures for apportioning forfeited property

- A. Calculation of the contributive share of any participating law enforcement agency is to be determined in the discretion of the prosecuting agency. The distribution decision of the prosecuting agency shall generally reflect the relative contribution of any law enforcement agency participating in any of the acts which led to the seizure or forfeiture of the property.
- B. A participating law enforcement agency shall submit a written request for distribution as detailed in Forfeiture Program Administration Standard Operating Procedure 07 within 90 days of the seizure and file the request with the prosecuting agency.

12:13 Criteria for apportioning forfeited property

- A. In determining the contributing share of any participating law enforcement agency, the prosecuting agency shall consider the following enumerated factors:
 - 1. The amount of money directly expended in pursuing the case: These funds, while "out-of-pocket" costs of the case itself, generally are not directly tied to an asset seized for forfeiture. Thus, these expenditures are not to be included with the asset maintenance and forfeiture prosecution costs which are to be deducted prior to calculation of law enforcement agency's contributive share. Payments for information or assistance relating to or in furtherance of a law enforcement investigation are costs associated with the underlying criminal investigation itself, independent of a forfeiture action. Nevertheless, because the expended money represents an identifiable out-of-pocket expense, the prosecuting agency money represents an identifiable out-of-pocket expense, the prosecuting agency shall generally reimburse such costs as fully as possible in determining a law enforcement agency's contributive share.
 - 2. The agency which initiated the case: The initiating law enforcement agency may well have been able to proceed with a criminal investigation without the assistance of others. To the extent that agency collaborated with other law enforcement agencies to further an investigation and develop a more significant case, it should not "lose" the value of an asset which it may in the normal course, and without assistance from other law enforcement agencies, have obtained independently. In these circumstances, the contributive share of the initiating law enforcement agency may be calculated in a greater than pure percentage contribution fashion in order to encourage and foster future law enforcement cooperation.

Furthermore, the agency which initiated the case may have made an insignificant manpower contribution to the forfeiture. For example, a stop by a State Trooper could result in a find of a large cache of drug money. The few moments expended by the trooper would be far less than expended in the prosecution of the case itself, which could, indeed, result in a major prosecution if the investigation could ascend the drug distribution hierarchy. Nevertheless, the "but for" nature of the trooper's act may warrant a greater contributive share for his agency than would be calculated solely by considering manpower or costs expended.

3. The agency which identified the asset: An asset may, for example, be identified as subject to forfeiture by using evidence contained in financial records, just as inconsistencies between one's net worth or purchases and legitimate known sources of income can reveal illegal income. Investigative accounting techniques may show that unlawfully acquired income was used to infiltrate or purchase a business or indirectly to acquire other apparently legitimate property. Thus, demonstration of a connection between the proceeds of crime and property would enable the forfeiture of that asset. Under these circumstances, the law enforcement agency's identification of the assets or business as an ultimate product of criminal activity could significantly expand the value of forfeiture in a particular case and may be appropriately rewarded.
4. The manpower expended in pursuing the case, including overtime costs: Manpower expenditures provide a reasonable indication of a law enforcement agency's efforts in pursuing a case, and thus its contribution to the overall law enforcement effort. It will undoubtedly be difficult or impossible to be completely accurate, however, in evaluating this cost, since officers will rarely work on only one case.
5. The law enforcement agency actively participates in and contributes personnel or other resources to a multi-jurisdictional task force.
6. The relative needs of the law enforcement agencies involved: Generally, these needs are not to be a factor in calculating a contributive share. In an unusual case involving a particularly large forfeiture, however, this would become a consideration in order to assure that forfeited assets are in fact used to enhance law enforcement efforts. The Attorney General, as chief law enforcement officer of the State, or the prosecutor, as chief law enforcement officer of a county, should, in making a decision distributing forfeited property, take into account the needs of the law enforcement agencies within his jurisdiction. Thus, from a public policy perspective, the prosecuting agency may in its discretion determine

that division of forfeited property be made other than in a purely mathematical allocation based in contribution.

7. Alternative availability of the asset to the agency in the near future from other seizures: If two participating law enforcement agencies are equally entitled to forfeited property or proceeds and one of the agencies, but not the other, regularly obtains forfeited funds, it is proper to consider that fact in calculating a contributive share. In general, of course, contributive shares are to be calculated on each participating law enforcement agency's relative contribution. Nevertheless, as discussed above, a factor to consider in dividing forfeitures is the overall effect on law enforcement within the State. Where tangible and indivisible property is to be distributed, the prosecuting agency, in deciding which participating law enforcement agency is to have the use of the property, should consider whether either agency may be able to obtain similar property alternatively in the near future.

12:14 Monitoring, reporting and auditing procedures

- A. A law enforcement agency distributing, receiving or expending forfeited property, proceeds or money shall maintain the full records documenting these distributions, receipts and expenditures. Every law enforcement agency distributing, receiving or expending such property or funds shall submit a quarterly report documenting those distributions, receipts and expenditures to both the Attorney General and the appropriate county prosecutor, as detailed in Forfeiture Program Administration Standard Operating Procedures 08 and 09.
- B. The Attorney General and the county prosecutor shall institute a record keeping system that fully document the seizure, return, (if applicable) forfeiture, distribution and use of all property subject to forfeiture or proceeds derived from the disposition of said property. Any record keeping systems used by a county prosecutor to maintain forfeiture records shall be reviewed and approved by the Division of Criminal Justice, Operations Bureau prior to its implementation or use.
- C. All county and municipal forfeiture records shall be audited as authorized in N.J.S.A. 40A:5-4 et seq. A copy of the final audit report for each forfeiture records audit shall be forwarded to the Division of Criminal Justice, Operations Bureau.
- D. The Attorney General reserves the right to audit the forfeiture records of any law enforcement agency. This right shall not restrict or impede the Attorney General's supervisory power pursuant to the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., or any other law, rule, regulation, directive,

opinion or agreement. The Attorney General may assess the county prosecutors for the cost of conducting audits of forfeiture records. These administrative costs shall be within a maximum established by agreement from time to time between the Attorney General and a majority of the county prosecutors. The cost of the audit may be assessed against the audited agency's law enforcement trust fund.

- E. The prosecutor of each county may audit the forfeiture records of any municipal law enforcement agency or any coalition of municipal law enforcement agencies within that county. The cost of the audit may be assessed against the audited agency's law enforcement trust fund.

Peer review

AUTHORITY: _____
PETER VERNIERO, ATTORNEY GENERAL