



Forfeited Asset Sharing Program Manual

*Department of Criminal Justice Services
1100 Bank Street
Richmond, Virginia 23219*

www.dcjs.virginia.gov

INTRODUCTION

In November 1990, the citizens of Virginia voted to adopt laws allowing local law enforcement agencies to benefit from the seizure of monies, property, and goods connected with the illegal distribution of narcotics. These laws made it possible for law enforcement agencies to receive the proceeds from the sale of items obtained in substantial connection with drug trafficking, and to have forfeited to them, for agency use, certain seized items that could be used to promote law enforcement. Prior to the enactment of these new laws, all monies seized and received from the sale of forfeited items were handed over the State Literary Fund, now law enforcement agencies can use these funds to their advantage.

According to § 19.2-386.22 of the *Code of Virginia*, all money and property used in substantial connection with the manufacture, sale or distribution of an illegal narcotic can be seized by a law enforcement agency. Anything of value furnished or intended to be furnished in exchange for controlled substances can also be seized. Further, all money and property, real or personal, traceable to an exchange together with any interest or profits derived from the investment of money or property is subject to seizure.

With the enactment of these laws came the establishment of the Forfeited Asset Sharing Program. The Forfeited Asset Sharing Program is governed by § 19.2-386.1-14 of the *Code of Virginia*. The major players in the asset forfeiture process are the seizing officer, the Chief of Police or Sheriff, the Commonwealth's Attorney, the Clerk of the Circuit Court, the Judge, and the Asset Forfeiture Coordinator for the Department of Criminal Justice Services (DCJS). This manual is designed to help law enforcement agencies understand the program and take the players in the process through a step-by-step process that begins with the point of seizure and ends with the disbursement of the seized funds.

Any questions should be directed to the Forfeited Asset Sharing Program (FASP) office at (804) 371-0538.

STEP ONE--SEIZURE

Under § 19.2-386.22 of the *Code of Virginia*, any property used in substantial connection with the illegal distribution or sale of narcotics can be seized by a law enforcement agency. This law, passed in 1991, has opened many doors for law enforcement agencies throughout the Commonwealth. Local law enforcement agencies have become more aware of drug dealers purchasing assets with drug profits or hiding drug profits in various bank accounts and in legitimate businesses. Once these profits or assets are discovered, they can be seized. This is an incentive to the local agencies to pursue the dealers more rigorously and convert their illegal gains into crime fighting resources.

As far as what type of property may be seized, there are no restrictions. According to the *Code of Virginia*, § 19.2-386.22, all money and property used in substantial connection with the manufacture, sale or distribution of an illegal narcotic can be seized by a law enforcement agency. Also, anything of value furnished or intended to be furnished in exchange for controlled substances is subject to seizure. Further, all money and property, real or personal, traceable to an exchange together with any interest or profits derived from the investment of money or property can be seized. Commonly seized items include cash, vehicles, cellular phones and pagers, handguns, and jewelry. As long as an item can be substantially connected to illegal narcotic manufacture, sale or distribution, as described above, it can be seized. The only exception to this is real estate cannot be seized unless the drug violation carries a minimum five-year sentence. An item can be seized any time within three years after the discovery of the last act providing grounds for the seizure. In other words, a law enforcement agency can arrest a drug dealer today and have up to three years to investigate his or her financial dealings and property holdings to determine what is linked to the drug activity.

Before an item is actually seized, the law enforcement agency should consider whether the agency has the resources to manage the property, the value of the property, and the impact on the violator. Simply stated, is it worth the time, effort, and money to seize the asset? There may be situations when a seizure, although completely within the scope of the law, would not be practical or profitable to pursue. For example, vehicles owned by innocent parties, vehicles where the cost to sell would exceed the value of the vehicle, real property that is heavily mortgaged, or a small amount of assets from a juvenile.

Once an item is seized, the law enforcement agency must decide whether it would like to pursue forfeiture under Virginia's Forfeited Asset Sharing Program or under federal statutes. There are several advantages to using Virginia's program:

- The jurisdiction(s) sharing in the forfeiture will receive a high percentage of the proceeds. The state law requires 90% of all proceeds to be returned to the jurisdiction(s) that participated in the seizure.
- FASP regulations direct the Commonwealth to return the full 90%, regardless of agency size or size of the jurisdiction. For example, if a three-officer agency seized a million dollars in proceeds, 90% of that forfeiture would be returned to the three-officer agency.
- Once seized assets have been forfeited and the appropriate paperwork is filed with DCJS, the Commonwealth is obligated under the Prompt Payment Act to return the local share of the proceeds within thirty days. The turn around time for federal forfeitures is three to six months, sometimes longer.
- DCJS will process all seizures \$500.00 and greater. All seizures under \$500.00 can be kept by the locality. This minimum amount also applies to the value of all miscellaneous assets such as: cellular phones, pagers, scales, small electronics, etc. The federal forfeiture program has minimum thresholds that can be reported: U.S. Currency--\$1,000; Vehicles--\$2,500; Airplanes--\$5,000; and Real Property--\$10,000.

It is possible for a law enforcement agency to report seized items to both the state and federal programs. For example, an agency may seize cash, vehicles, jewelry, and pagers under the state law and on the same case seize a horse farm under the federal statute. In this case, it is actually to the law enforcement agency's advantage to split the reporting of the seized items because they can rely on the U.S. Marshals Service to care for the farm until completion of the forfeiture process.

Seizures under federal statute should not be reported to DCJS. Questions regarding federal asset forfeiture can be answered by referring to "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies", U.S. Department of Justice, 2009, and "Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies", U.S. Department of Treasury, October 1, 1996.

STEP TWO--NOTICE OF SEIZURE

After property has been seized, the law enforcement agency's first step is to notify their Commonwealth's Attorney in writing. According to § 19.2-386.3 of the *Code of Virginia*, within 21 days of the written notification from the seizing agency, the Commonwealth's Attorney, on behalf of the seizing agency, shall file a Notice of Seizure for Forfeiture with the Clerk of the Circuit Court. This Notice of Seizure for Forfeiture must describe the seized property, the grounds for seizure, the date of seizure, and all known owners and lien holders of record. The Clerk must then mail the Notice of Seizure for Forfeiture to the last known address of all identified owners and lien holders.

Also, within 21 days of seizure, the seizing agency must file a DCJS Form 998, the Asset Seizure Reporting Form. This form is very important because it lets DCJS know that certain property has been seized. The Form 998 should be completed as follows:

- 1.) **Seizing Agency and 2.) E-Mail Address:** List the full name of the law enforcement agency that seized the property. If the seizure is a task force seizure, list the agency participating in the task force that is responsible for filing the appropriate paperwork. Do not list all the names of task force members in this block.
- 3.) **Joint Seizure Participating Agencies:** List the names of all agencies who will be involved in the sharing of the forfeited assets. The members of task force operations should be listed here.
- 4.) **Seizing Agency Case No.:** List the law enforcement agency's case number. This tracks the seizure within the law enforcement agency and serves as a cross-reference for verification at DCJS.

DCJS Seizure No.: This number is assigned when DCJS receives the 998 Form. This number is very important to DCJS and upon receipt of the 998 Form, DCJS will send an acknowledgement letter to the law enforcement agency informing them of the DCJS seizure number. This number is used in all correspondence from DCJS.

- 5.) **Date of Seizure:** List the date the property was seized. Remember that all seizures must be reported to DCJS within 21 days of the seizure.
- 6.) **Seizure Location:** List the location where the property was seized. This could be a street address, an intersection, or other locale.
- 7.) **Legal Grounds for Seizure:** This is already filled in with § 19.2-386.22. This code site gives law enforcement agencies the authority to seize any property that has a substantial connection to the manufacture, sale or distribution of an illegal narcotic. **Only items seized under § 19.2-386.22 should be reported to DCJS.**

- 8.) **Detailed Description of Property:** List, in detail, all items that have been seized. Supplemental sheets, on agency letterhead, may be necessary. Identification numbers and serial numbers must be listed if available.
- 9.) **Seized from:** List the names and addresses of the individuals from whom the property was seized.
- 10.) **Lien/Mortgage holder(s):** List any known lien and/or mortgage holders that have an interest in the seized property.
- 11.) **Property stored at:** List the storage location(s) of the seized property. This is important because property may need to be stored at various locations and it helps the law enforcement agency keep track of any costs incurred for the seizure and forfeiture action. Common entries here would be the police property/evidence room or a private storage lot.
- 12.) **Contact Officer:** List the name, title and phone number of the law enforcement agency's contact officer. The officer must then sign the form. This information is important because it give DCJS a person to contact if there is a question about the property or the 998 Form.
- 13.) **Chief/Sheriff/Superintendent:** List the name, title and phone number of the Chief/ Sheriff/Superintendent of the law enforcement agency. He or she must also sign the 998 Form.

The bottom of the 998 Form lists how the Form is to be distributed. The original should be forwarded to:

**Forfeited Asset Sharing Program
Department of Criminal Justice Services
1100 Bank Street, 12th Floor
Richmond, Virginia 23219**

Once the 998 form is received and is complete, DCJS begins the administrative process. This process entails:

- Assigning the DCJS Seizure Number. This number is unique to each seizure and is important in helping DCJS keep accurate records.
- Sending an acknowledgement form to the Chief, Sheriff, or Superintendent of the law enforcement agency acknowledging the receipt of the 998 Form and advising the agency of the DCJS Seizure Number.
- Entering the seizure information into the FASP Database that will track the seizure throughout the forfeiture process.

Once the 998 Form has been filed with DCJS and the defendant has been notified of the seizure by the Circuit Court Clerk's Office, step two in the asset seizure and forfeiture process is complete.

STEP THREE--INFORMATION FILING AND THE COURT PROCESS

Within ninety days of the seizure, or at the same time as the filing of the Notice, the Commonwealth's Attorney must file an Information with the Circuit Court. This Information initiates the civil forfeiture process. The Information must: list all known owners and lien holders; specifically describe the seized property; set forth the grounds for forfeiture; ask that the property be sold or otherwise disposed of; and ask that all interested parties be notified to appear and show cause why such property should not be forfeited to the state. If an information is not filed within this ninety-day time period, the property must be released to the owner or lien holder.

Within thirty days of receiving the Notice and Information, the owner and/or lien holder must file, under oath, an answer to the Information. The defendant must outline his or her claim, his or her right to the ownership or interest in the property, and the reasons why forfeiture should not take place and any exemption that might apply. If the owner and/or lien holder does not file an answer to the Information, he or she is in default. Default simply means that the owner does not wish to contest the forfeiture. In these cases, the Court should rule on the method of disposal of the forfeited item(s). If the law enforcement agency requests that the property be returned "in-kind" for law enforcement use, the court may rule on that request. Once the Court orders the property forfeited, the law enforcement agency then begins the steps necessary to report the forfeiture to DCJS.

In some cases, the owner of the seized items will oppose the forfeiture. In these instances, a civil trial date will be set. Since the forfeiture proceedings are a civil matter, and separate from the criminal trial, the Court has the option to set the civil trial date before, after, or at the same time as the criminal trial. In some cases, the defense or the Commonwealth may request a stay until after the criminal proceedings. This would, in effect, freeze the civil case until after the sentencing in the criminal case.

This delay should not deter law enforcement officers from pursuing forfeiture actions. Keep in mind that once the Court has ruled on the matter and the necessary papers are filed with DCJS, the Commonwealth is bound by the Prompt Payment Act to return the appropriate share to the localities within thirty days.

After the Court rules on a forfeiture case, the law enforcement agency has completed step three in the asset forfeiture process. The next step is to report the forfeiture to DCJS.

STEP FOUR--FILING A PROCEEDS REPORT WITH DCJS

Upon adjudication of the civil forfeiture case, and the completion of all court ordered instructions, the seizing agency must file certain required documents with DCJS for the use of the forfeited property or money. The required documents are:

- Seized Property Disposition Sharing Decision Form (DCJS Form 999)
- Form 999 Supplement (when applicable)
- Check in the amount of all forfeited cash and proceeds from any sale of forfeited property (less costs incurred) – Also a copy of the bill of sale for the sale of assets.
- Copy of the court order
- Copy of any special sharing agreement arranged by the participating agencies and offices
- Petition for the return of in-kind property (when applicable)

The DCJS Form 999—Seized Property Sharing Disposition Form

The DCJS Form 999 is similar to the DCJS Form 998. This form notifies DCJS of the disposition of the forfeiture case and facilitates the return of all forfeited assets to the appropriate law enforcement agencies.

- 1. Seizing Agency E-mail Address:** List the complete name of the seizing agency here, this should be the same as on the Form 998.
- 2. Seizing Agency Case Number:** List the law enforcement agency's case number.

DCJS Seizure Number: List the DCJS Seizure number. This number is assigned by DCJS and is included in the acknowledgement letter sent to seizing agency upon receipt of the Form 998.

- 3. Case Name:** List the name of the defendant (s) for this case.
- 4. Date of Court Disposition:** List the date of the forfeiture disposition. Note: This date could be different from the date the criminal charge against the drug dealer was adjudicated.
- 5. Disposition of Property Seized:** There are four choices listed here: Forfeiture; Dismissal; Release to Lien Holder; Release to Innocent Owner. Check the appropriate disposition and list any specific conditions ordered by the judge. For example, \$4,000.00 in U.S. Currency could have been seized, but the judge ordered that \$2,000.00 be forfeited and \$2,000.00 be returned to the owner. In this instance, you would check Forfeiture and Release to Innocent Owner and list in the Specify Conditions line that \$2,000.00 was forfeited and \$2,000.00 was returned to the owner.
- 6. Contact Officer:** List the name, title and phone number of the seizing agency's contact officer. The officer must then sign the form. This information is important because it give DCJS a contact in case there are any questions or problems regarding the forfeiture.

7. **Joint Sharing Decisions:** List the names of all participating agencies and the percentage of proceeds to be forwarded to that jurisdiction. If the proceeds are to be shared by a task force, please attach a copy of the task force agreement if it is not already on file with DCJS.
8. **Certification:** List the name and title of all law enforcement agency heads that are to share in the proceeds. The agency head must certify that the information that is listed on the Form 999 is true and accurate and that all proceeds will be used for law enforcement purposes only. He or she must then sign the form.
9. **Sale of Assets:** This section is to be completed upon the sale of an asset after it has been awarded back to an agency for “in-kind” use. All information requested should be completed and sent in with a copy of the bill of sale and check (if applicable).

Form 999 Supplement

The 999 Supplement is provided to allow agencies to list all the costs they incurred in the management of the seized property. These costs can be deducted from the total amount sent to DCJS. For example, if a vehicle is seized, towed, stored, forfeited, and eventually sold, the seizing agency can deduct the costs of those actions from any proceeds sent to DCJS. *Only those costs incurred during the management of the seized property can be deducted. Costs incurred during the investigation and arrest of the property owner cannot be deducted.*

The Forfeited Asset Sharing Program does not allow for deductions for storage in the law enforcement agency’s property or evidence rooms or departmental storage lots. The following example illustrates a typical entry on a Form 999 Supplement. In this example, the proceeds from the sale of the vehicle would be calculated by taking the sale price of the car (\$8,000) and deducting the total costs incurred (\$1375). A check for the amount of \$6,625 would then be sent to DCJS for disbursal.

DCJS will not be involved in the storage or management of the assets seized for forfeiture. Seizing agencies may need to set aside funds to compensate storage lots and other vendors until final disposition allows for the sale of the property. In cases where costs have been incurred on a seized item and the item was not forfeited, the agency can petition the Commonwealth’s Criminal Fund for reimbursement. Seizing agencies can also petition the Criminal Fund in the case that the costs incurred were greater than the proceeds from the sale of the forfeited property.

The Check

When cash proceeds are involved, a check or money order payable to the Treasurer of Virginia should be sent to the Department of Criminal Justice Services along with the Form 999 and the court order. The check should be in the amount of the cash proceeds plus the proceeds from any sold item, minus the costs incurred to management or maintenance of the sold property. For example, the court may order forfeiture of \$1,000.00 in U.S. Currency and the forfeiture and sale of an automobile. The car is sold for \$5,000.00. The costs incurred in the management and maintenance of the vehicle include towing (\$50.00), storage (\$250.00), and the 10% commission given to the car dealership (\$500.00). The check to DCJS would be for \$5,200.00.

| | |
|--------------------------|-----------------|
| Cash Forfeited | \$1,000.00 |
| Sale of Auto | <u>5,000.00</u> |
| Total Proceeds | \$6,000.00 |
| Less costs incurred | <u>-800.00</u> |
| Amount forwarded to DCJS | \$5,200.00 |

If the auto in the above case was to be returned as in-kind property for agency use, the check to DCJS would only be for the amount of cash seized, \$1,000.00. Should the in-kind property be sold within **12 months** of reporting to DCJS, the agency is required to notify DCJS and submit a new 999 and check in the amount of the proceeds of the sale if greater than \$500.00.

If the vehicle is sold after 12 months, the agency may keep all the proceeds from the sale. However, it still must be reported to DCJS that the vehicle has been sold.

The Court Order

A copy of the forfeiture order must be sent with the Form 999 and the check. The order can be obtained through the Circuit Court Clerk's Office.

Sharing Agreements

Narcotics investigations are often conducted by two or more law enforcement agencies through a task force. When items are seized for forfeiture as a result of the investigations, the participating agencies will share in the proceeds. In many cases, only cash is seized, or the agreement among the task force agencies is that all forfeited property will be reduced to cash and a percentage of the cash disbursed to each agency. For example, if there are five agencies in a task force, the proceeds could be divided equally among the agencies, each one receiving 20% of the proceeds.

However, if one or more items forfeited is to be returned in-kind to one of the participating agencies, an agreement will need to be worked out by the head law enforcement officers of each department. For example, three agencies participate in an investigation that results in the seizure and forfeiture of \$5,000.00 in U.S. Currency and a 1995 Ford. One of the departments would like the car returned in-kind, but the other two agencies want equitable compensation. An agreement could be made that would allow one agency to have the car returned in-kind and in doing so this agency would give up its claim to the forfeited cash, and the cash would be divided between the other two agencies.

When an agreement is reached by participating agencies on the percentage of the proceeds that will be returned, DCJS will honor those agreements. Distributions need not be divided equally among the participants, however,

all participants must agree on them. Once a task force has been formed and a sharing agreement has been signed, the task force must send a copy of the signed agreement to DCJS. DCJS keeps a file of task force agreements on hand, and has to refer to them quite often. If you are a part of a newly formed task force and DCJS does not have a copy of your task force agreement, you must send one when you send your Form 999, court order, and check.

Petition for the Return of In-Kind Property

Whenever property is to be returned in-kind, the agency requesting the return of the property must submit a brief request to DCJS for that property. This request should be on agency letterhead and state that the agency is requesting the return of the property in-kind and that it will be used for law enforcement purposes only.

DISPUTED DISTRIBUTIONS

An underlying goal of the Forfeited Asset Sharing Program is to increase the cooperative efforts among the various law enforcement agencies throughout the Commonwealth. Investigations that deal specifically with narcotics at the onset could very possibly expand into burglary, robbery, and homicide. Very often, as a result of monetary rewards provided by diverse markets, narcotics dealers will establish links in several jurisdictions. Neighboring jurisdictions often find themselves working cases on the same individuals, for similar crimes. Currently there are over fifty ongoing narcotics task force operations in the Commonwealth. At any given time, however, two or more law enforcement agencies may enter into a short term arrangement to investigate, conduct a raid, or seize property for forfeiture in narcotics trafficking. Almost always, whether a formal task force, or an impromptu arrangement, the agencies involved cooperate on the sharing of the seized and forfeited property. Unfortunately, a dispute over the forfeited proceeds can arise. The Criminal Justice Services Board was aware that conflicts might occur and in turn developed a plan to handle such disputes. The Criminal Justice Services Board's Rules and Regulations for the Forfeited Asset Sharing Program are outlined in the appendix; §7C and D discuss disputed distributions.

Any law enforcement agency that has established, or wishes to establish, a claim for a share of the forfeited proceeds, and cannot reach an agreement on the disbursement of the proceeds with the other agency(ies) involved, may petition the Criminal Justice Services Board for a proportional share. This petition must be on agency letterhead and must outline how the disputing agency feels the proceeds should be disbursed. The petition must be filed with DCJS within twenty-one days of the entry of the court forfeiture order. DCJS will then distribute copies of the petition to the other participating agencies, who then have fourteen days to respond to the petition. Once the responses have been received, DCJS will prepare a decision package for the Forfeited Assets Distribution Committee (FADC). The FADC is comprised of members of the Criminal Justice Services Board. The Chairperson of the FADC will arrange a hearing on the dispute. The hearing will be held within forty-five days of the receipt of the petition.

The FADC will base their decision on several factors: the petitioner's role in the investigation which led to the seizure and eventual forfeiture, the petitioner's contribution to the prosecution, and how other forfeited assets (if any) were distributed. The FADC will then decide how the proceeds are to be disbursed. All agencies involved in the dispute have the right to appeal the decision to the full Criminal Justice Services Board. The appeal must be filed with DCJS within ten days of the FADC decision. Any appeals of the FADC decision will be heard at the next regularly scheduled Board meeting. The Criminal Justice Services Board decision will be final.

Law enforcement agencies are encouraged to make sharing decision prior to the court forfeiture action. A sample agreement is found in the appendix. Hopefully, through planning and cooperation, these disputes can be avoided.

SUMMARY

The Forfeited Asset Sharing Program is the administrative process that enables local law enforcement agencies to utilize the state drug asset forfeiture law. Neither the law nor the program is designed as a money making venture, but rather as tools to be used in the war against illegal narcotics traffickers.

Virginia is fortunate to have one of the most comprehensive drug asset forfeiture laws in the United States. Through the cooperation and the efforts of the law enforcement community, this program will take its place as one the most used and effective of the mechanisms in the effort to stop the flow of illegal narcotics.

THE ROLE OF THE POLICE DEPARTMENT / SHERIFF'S OFFICE

The role of the Police Department/Sheriff's Office is the most important in the asset forfeiture process. The Police Department/ Sheriff's Office is responsible for the investigation, the arrest, and the seizure. Without seizures, there would be no need for the asset forfeiture law, or the Forfeited Asset Sharing Program.

The first step for the Police Department/Sheriff's Office is to seize any asset that has a substantial connection to illegal narcotics manufacture, sale or distribution. Once an asset has been seized, the Police Department/Sheriff's Office must immediately notify the Commonwealth's Attorney's Office, in writing, of the seizure and the circumstances surrounding the seizure, so he or she can start the forfeiture process in the Circuit Court. Next, the seizing agency must notify DCJS of the seizure through the DCJS Form 998.

Once the Commonwealth's Attorney initiates the forfeiture process, the Police Department/Sheriff's Office should track each asset in the process. After the court rules on the forfeiture of an item, the Police Department/Sheriff's Office is responsible for gathering the appropriate documents to send to DCJS: the check, the court order, the DCJS Form 999 (and 999 Supplement if necessary), and the petition for In-Kind return of the forfeited property (if applicable).

THE ROLE OF THE COMMONWEALTH'S ATTORNEY

The Commonwealth's Attorney's main role in the asset forfeiture process is to represent the Commonwealth in the civil proceedings. The Commonwealth's Attorney must file the Notice of Seizure with the Circuit Court within twenty-one days of written notification of the seizure. The Commonwealth's Attorney is also responsible for investigating the seizure and filing an Information with the Circuit Court within ninety days of the seizure.

Once the court date has been set, the Commonwealth's Attorney must prove to the court that the seized assets have a substantial connection to the illegal manufacture, sale or distribution of narcotics and should be forfeited. If, for some reason, the criminal case is lost, the civil forfeiture case may still be won by using depositions, interrogatories, and requests for admissions or a default judgment.

The Commonwealth's Attorney must work closely with the Police Department/Sheriff's Office to ensure that time deadlines are met and prevent the return of drug money to the drug dealer. Commonwealth's Attorney's usually receive a portion of the forfeited proceeds for their efforts.

THE ROLE OF THE CIRCUIT COURT CLERK'S OFFICE

The Circuit Court Clerk does not have a big role in the asset forfeiture process, but he or she does have an important role. After the Commonwealth's Attorney files the Notice of Seizure, the Clerk is responsible for making sure the defendant and all known owners and lien holders are notified of the seizure. The Clerk is also responsible for setting the court date and preparing the court orders after the judge makes a ruling.

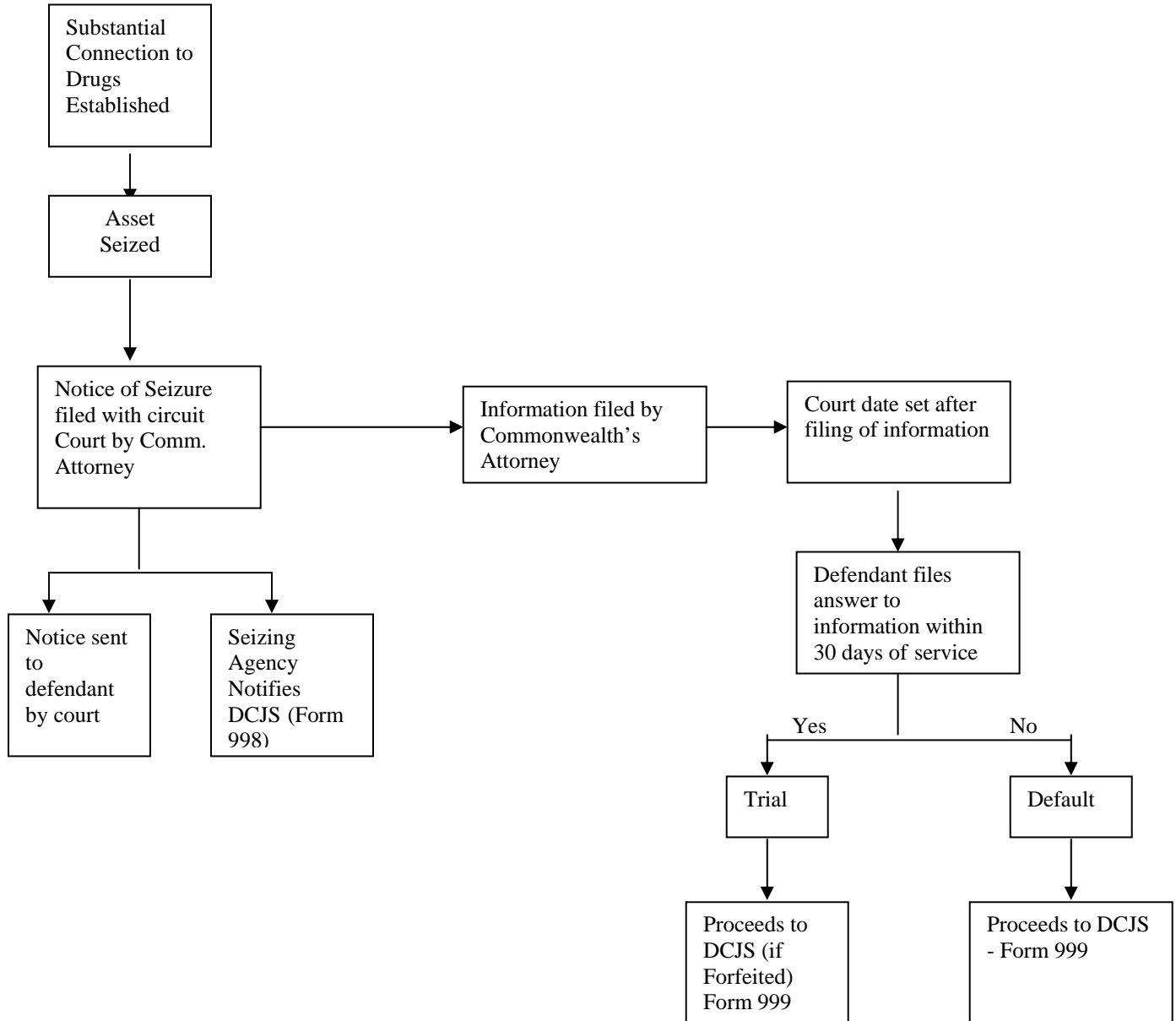
THE ROLE OF THE JUDGE

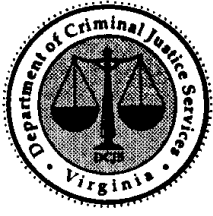
The Judge's role in the asset forfeiture process is very important. He or she is the one who hears the facts and makes the decision whether an item is forfeited to the Commonwealth or returned to the owner.

Appendices

- A. Flow Chart**
- B. DCJS Form 998 and 999 and Instructions**
- C. Sections from *Code of Virginia***
- D. Criminal Justice Services Board Rules and Regulations**
- E. Sample Task Force Agreement**
- F. Sample Court Documents**
- G. Sample Agency Policy Statement**
- H. Uses of Equitably Shared Property**

FORFEITED ASSET SHARING PROGRAM FLOW CHART NARCOTIC-RELATED CASES





Department of Criminal Justice Services
Forfeited Asset Sharing Program
 1100 Bank Street, 12th Fl. ● Richmond, Virginia 23219
 804-371-0538 FAX: 804-786-0053
 E-Mail: *deborah.turck@dcjs.virginia.gov*

DCJS Seizure #:
(To be completed by DCJS)

DCJS-998

| ASSET SEIZURE REPORTING FORM Please type. | | |
|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| 1. Seizing Agency: | 2. E-Mail Address: | |
| 3. Joint Seizure Participating Agencies: <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list Agencies: | | |
| 4. Seizing Agency Case No.: | 5. Date of Seizure: | |
| 6. Seizure Location(s): <i>(Include name of City/County)</i> | 7. Legal Grounds for Seizure: Section 19.2-386.22 of the Code of Virginia | |
| 8. Detailed Description of Property: | | |
| VEHICLES: (Complete all items below:) | CASH: (Report \$500 or above only) Total Amount: (Do not itemize) | MISCELLANEOUS ITEMS: (Report items over \$500 in value only) |
| a) Year: _____ | b) _____ | c) _____ |
| Make: _____ | _____ | _____ |
| Model: _____ | _____ | _____ |
| VIN#: _____ | _____ | _____ |
| Value: _____ | _____ | _____ |
| 9. Seized From: | | |
| Name a) _____ | b) _____ | c) _____ |
| Address _____ | _____ | _____ |
| _____ | _____ | _____ |
| 10. Lien/Mortgage Holder(s): | | |
| Name a) _____ | b) N/A _____ | c) N/A _____ |
| Address _____ | _____ | _____ |
| _____ | _____ | _____ |
| 11. Property Stored at: | | |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| 12. Contact Officer: | | |
| Name _____ | Title _____ | Telephone _____ |
| Signature _____ | | |
| 13. Chief/Sheriff/Superintendent: | | |
| Name _____ | Title _____ | Telephone _____ |
| Signature _____ | | |

Original to DCJS * Copy to Commonwealth's Attorney * Copy to Originating Agency Rev. 04/2009

(If the number of assets is more than the number of spaces available on this form, please attach a list of items seized.)

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- 9. Seized from:** List the names and addresses of the individuals from whom the property was seized.
- 10. Lien/Mortgage holder(s):** List any known lien and/or mortgage holders that have an interest in the seized property.
- 11. Property stored at:** List the storage location(s) of the seized property. This is important because property may need to be stored at various locations and it helps the law enforcement agency keep track of any costs incurred for the seizure and forfeiture action. Common entries here would be the police property/evidence room or a private storage lot.

12. Contact Officer: List the name, title and phone number of the law enforcement agency's contact officer. The officer must then sign the form. This information is important because it give DCJS a person to contact if there is a question about the property or the 998 Form.

13. Chief/Sheriff/Superintendent: List the name, title and phone number of the Chief/ Sheriff/Superintendent of the law enforcement agency. He or she must also sign the 998 Form.

The bottom of the 998 Form lists how the Form is to be distributed. The original should be forwarded to:

**Forfeited Asset Sharing Program
Department of Criminal Justice Services
1100 Bank Street, 12th Floor
Richmond, Virginia 23219**



Department of Criminal Justice Services
Forfeited Asset Sharing Program
 1100 Bank Street-12th Floor • Richmond, Virginia 23219
 804-371-0538 FAX: 804-786-0053
 E-Mail: *deborah.turck@dcjs.virginia.gov*

DCJS 999 Form

Seizure #:

DCJS

**SEIZED PROPERTY DISPOSITION
 SHARING DECISION FORM**

Please type.

**SUBMISSION OF THIS FORM MUST BE ACCOMPANIED BY A COURT ORDER
 AND A CHECK FOR FORFEITED CURRENCY OR BILL OF SALE OF FORFEITED ITEMS.**

1. Seizing Agency: _____ **E-Mail Address:** _____

2. Seizing Agency Case No.: _____ **3. Defendant's Name:** _____ **4. Date of Court Disposition:** _____

5. Disposition of Property Seized:

| | | | |
|--------------------------------------------------------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| <input type="checkbox"/> Forfeiture List of Item(s) Forfeited: | <input type="checkbox"/> Dismissal List of Item(s) Dismissed: | <input type="checkbox"/> Release to Lien Holder List of Item(s) Released: | <input type="checkbox"/> Return to Owner List of Item(s) Returned: |
| | | | |
| | | | |
| Expenses deducted: | | | |

For forfeited non-cash items, will this asset be requested for in-kind use or sale? (Check one)

In-Kind **Sale** **Not known at this time.**

Upon sale of item, complete section 9 below and return with the bill of sale.

6. Contact Officer: (Print)

| | | |
|-------------------|-------------|-----------------|
| Name _____ | Title _____ | Telephone _____ |
| Signature: | | Date: |

7. Joint Agency Sharing Decision: Percentages must be listed for all agencies to equal remaining 90%

| | | | | | |
|----------------------------------------|-------|---|----------------------|-------|---|
| Agency: DCJS (Per §19.2-386.14) | 10 | % | Agency: _____ | _____ | % |
| Agency: _____ | _____ | % | Agency: _____ | _____ | % |
| Agency: _____ | _____ | % | Agency: _____ | _____ | % |
| Agency: _____ | _____ | % | Agency: _____ | _____ | % |
| Agency: _____ | _____ | % | Agency: _____ | _____ | % |

8. Certification: I certify the above information is true and accurate, that the property transferred will be used for the law enforcement purpose stated, and that all monies received pursuant to this request will be deposited and accounted for consistent with applicable state laws, regulations, and court orders.

Chief/Sheriff/Superintendent: (Print)

| | | |
|-----------------|-----------------|-----------------|
| Name _____ | Name _____ | Name _____ |
| Title _____ | Title _____ | Title _____ |
| Signature _____ | Signature _____ | Signature _____ |

9. SALE OF ASSETS: Complete this section AFTER the sale of an asset for this case and submit.

| | | |
|------------------------------------|----------------------|-------------|
| Description of item sold: | Date of sale: | Sale price: |
| Expenses deducted from sale price: | Net proceeds: | |

(If net proceeds are \$500 or more AND within a year from the date of the court order, submit a check for the net proceeds, copy of bill of sale, and this form to DCJS)

(If net proceeds are less than \$500 OR the sale was after one year from the court order date, then submit only this form and a copy of the bill of sale.)

The DCJS Form 999—Seized Property Sharing Disposition Form

The DCJS Form 999 is similar to the DCJS Form 998. This form notifies DCJS of the disposition of the forfeiture case and facilitates the return of all forfeited assets to the appropriate law enforcement agencies.

DCJS Seizure Number: List the DCJS Seizure number. This number is assigned by DCJS and is included in the acknowledgement form sent to seizing agency upon receipt of the Form 998.

- 1. Seizing Agency E-mail Address:** List the complete name of the seizing agency here; this should be the same as on the Form 998.
- 2. Seizing Agency Case Number:** List the law enforcement agency's case number.
- 3. Case Name:** List the name of the defendant (s) for this case.
- 4. Date of Court Disposition:** List the date of the forfeiture disposition. Note: This date could be different from the date the criminal charge against the drug dealer was adjudicated.
- 5. Disposition of Property Seized:** There are four choices listed here: Forfeiture; Dismissal; Release to Lien Holder; Release to Innocent Owner. Check the appropriate disposition and list any specific conditions ordered by the judge. For example, \$4,000.00 in U.S. Currency could have been seized, but the judge ordered that \$2,000.00 be forfeited and \$2,000.00 be returned to the owner. In this instance, you would check Forfeiture and Release to Innocent Owner and list in the Specify Conditions line that \$2,000.00 was forfeited and \$2,000.00 was returned to the owner.
- 6. Contact Officer:** List the name, title and phone number of the seizing agency's contact officer. The officer must then sign the form. This information is important because it give DCJS a contact in case there are any questions or problems regarding the forfeiture.
- 7. Joint Sharing Decisions:** List the names of all participating agencies and the percentage of proceeds to be forwarded to that jurisdiction. If the proceeds are to be shared by a task force, please attach a copy of the task force agreement if it is not already on file with DCJS.
- 8. Certification:** List the name and title of all law enforcement agency heads that are to share in the proceeds. The agency head must certify that the information that is listed on the Form 999 is true and accurate and that all proceeds will be used for law enforcement purposes only. He or she must then sign the form.
- 9. Sale of Assets:** This section is to be completed upon the sale of an asset after it has been awarded back to an agency for "in-kind" use. All information requested should be completed and sent in with a copy of the bill of sale and check (if applicable).

Form 999 Supplement

The 999 Supplement is provided to allow agencies to list all the costs they incurred in the management of the seized property. These costs can be deducted from the total amount sent to DCJS. For example, if a vehicle is seized, towed, stored, forfeited, and eventually sold, the seizing agency can deduct the costs of those actions from any proceeds sent to DCJS. *Only those costs incurred during the management of the seized property can be deducted. Costs incurred during the investigation and arrest of the property owner cannot be deducted.*

The Forfeited Asset Sharing Program does not allow for deductions for storage in the law enforcement agency's property or evidence rooms or departmental storage lots. The following example illustrates a typical entry on a Form 999 Supplement. In this example, the proceeds from the sale of the vehicle would be calculated by taking the sale price of the car (\$8,000) and deducting the total costs incurred (\$1375). A check for the amount of \$6,625 would then be sent to DCJS for disbursal.

DCJS will not be involved in the storage or management of the assets seized for forfeiture. Seizing agencies may need to set aside funds to compensate storage lots and other vendors until final disposition allows for the sale of the property. In cases where costs have been incurred on a seized item and the item was not forfeited, the agency can petition the Commonwealth's Criminal Fund for reimbursement. Seizing agencies can also petition the Criminal Fund in the case that the costs incurred were greater than the proceeds from the sale of the forfeited property.

ATTACHMENTS

- 1) Check for all proceeds made payable to: Treasurer of Virginia
- 2) Copy of Court Order
- 3) Supplement to Form 999 (if necessary)
- 4) Copy of multiple agency sharing agreement on departmental letterhead stationery

Forward to:

Department of Criminal Justice Services
1100 Bank Street, 12th Floor
Richmond, Virginia 23219

Appendix C

Sections from the *Code of Virginia*

§ **19.2-386.22**. Seizure of property used in connection with or derived from illegal drug transactions.

A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2: (i) all money, medical equipment, office equipment, laboratory equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale or distribution of controlled substances or possession with intent to sell or distribute controlled substances in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent to distribute marijuana in violation of subdivisions (a) (2), (a) (3) and (c) of § 18.2-248.1, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of § 18.2-248 or for marijuana in violation of § 18.2-248.1 or for a controlled substance or marijuana in violation of § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange, together with any interest or profits derived from the investment of such money or other property. Under the provisions of clause (i), real property shall not be subject to lawful seizure unless the minimum prescribed punishment for the violation is a term of not less than five years.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title.

19.2-386.1. Commencing an action of forfeiture.

An action against any property subject to seizure under the provisions of § **19.2-386.15** or § 19.2-386.22 shall be commenced by the filing of an information in the clerk's office of the circuit court. Any information shall be filed in the name of the Commonwealth by the attorney for the Commonwealth or may be filed by the Attorney General if so requested by the attorney for the Commonwealth. Venue for an action of forfeiture shall lie in the county or city where (i) the property is located, (ii) the property is seized, or (iii) an owner of the property could be prosecuted for the illegal conduct alleged to give rise to the forfeiture. Such information shall (i) name as parties defendant all owners and lienholders then known or of record and the trustees named in any deed of trust securing such lienholder, (ii) specifically describe the property, (iii) set forth in general terms the grounds for forfeiture of the named property, (iv) pray that the same be condemned and sold or otherwise be disposed of according to law, and (v) ask that all persons concerned or interested be notified to appear and show cause why such property should not be forfeited. In all cases, an information shall be filed within three years of the date of actual discovery by the Commonwealth of the last act giving rise to the forfeiture or the action for forfeiture will be barred.

§ **19.2-386.2**. Seizure of named property.

A. When any property subject to seizure under § 19.2-386.15 or § **19.2-386.22** has not been seized at the time an information naming that property is filed, the clerk of the circuit court, upon motion of the attorney for the Commonwealth wherein the information is filed, shall issue a warrant to the sheriff or other state or local law-enforcement officer authorized to serve criminal process in the jurisdiction where the property is located, describing the property named in the complaint and authorizing its immediate seizure.

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

§ **19.2-386.3**. Notice of seizure for forfeiture and notice of motion for judgment.

A. If an information has not been filed, then upon seizure of any property under § 19.2-386.15 or § 19.2-386.22, the agency seizing the property shall forthwith notify in writing the attorney for the Commonwealth in the county or city in which the seizure occurred, who shall, within 21 days of receipt of such notice, file a notice of seizure for forfeiture with the clerk of the circuit court. Such notice of seizure for forfeiture shall specifically describe the property seized, set forth in general terms the grounds for seizure, identify the date on which the seizure occurred, and identify all owners and lien holders then known or of record. The clerk shall forthwith mail by first-class mail notice of seizure for forfeiture to the last known address of all identified owners and lien holders. When property has been seized under § 19.2-386.15 or § 19.2-386.22 prior to filing an information, then an information against that property shall be filed within 90 days of the date of seizure or the property shall be released to the owner or lien holder.

B. Except as to corporations, all parties defendant shall be served, in accordance with § 8.01-296, with a copy of the information and a notice to appear prior to any motion for default judgment on the information. The notice shall contain a statement warning the party defendant that his interest in the property shall be subject to forfeiture to the Commonwealth unless within 30 days after service on him of the notice, or before the date set forth in the order of publication with respect to the notice, an answer under oath is filed in the proceeding setting forth (i) the nature of the defendant's claim, (ii) the exact right, title or character of the ownership or interest in the property and the evidence thereof, and (iii) the reason, cause, exemption or defense he may have against the forfeiture of his interest in the property, including but not limited to the exemptions set forth in § 19.2-386.8. Service upon corporations shall be made in accordance with § 8.01-299 or subdivision 1 or 2 of § 8.01-301; however, if such service cannot be thus made, it shall be made by publication in accordance with § 8.01-317.

§ **19.2-386.4**. Records and handling of seized property.

Any agency seizing property under §§ 19.2-386.2, 19.2-386.15 or § 19.2-386.22, pending forfeiture and final disposition, may do any of the following:

1. Place the property under constructive seizure by posting notice of seizure for forfeiture on the property or by filing notice of seizure for forfeiture in any appropriate public record relating to property;
2. Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest-bearing account;
3. Remove the property to a place designated by the circuit court in the county or city wherein the property was seized; or
4. Provide for another custodian or agency to take custody of the property and remove it to an appropriate location within or without the jurisdiction of the circuit court in the county or city wherein the property was seized or in which the complaint was filed.

A report regarding the type of property subject to forfeiture and its handling pursuant to this section and § 19.2-386.5, and the final disposition of the property shall be filed by the seizing agency with the Department of Criminal Justice Services in accordance with regulations promulgated by the Board.

§ **19.2-386.5**. Release of seized property.

At any time prior to the filing of an information, the attorney for the Commonwealth in the county or city in which the property has been seized pursuant to § 19.2-386.15 or § 19.2-386.22 may, in his discretion, upon the payment of costs incident to the custody of the seized property, return the seized property to an owner or lien holder, without requiring that the owner or lien holder post bond as provided in § 19.2-386.6, if he believes the property is properly exempt from forfeiture pursuant to § 19.2-386.8.

§ **19.2-386.6**. Bond to secure possession.

If the owner or lien holder of the named property desires to obtain possession thereof before the hearing on the information filed against the same, such property shall be appraised by the clerk of the court where such information is filed. The clerk shall promptly cause the property to be appraised at its fair cash value, and forthwith make return thereof in writing to the court. Any appraisal fee shall be taxed as costs as provided in § 19.2-386.12. Upon the return of the appraisal, the owner or lien holder may give a bond payable to the Commonwealth, in a penalty of the amount equal to the appraised value of the property plus the court costs which may accrue, with security to be approved by the clerk and conditioned for the performance of the final judgment of the court, on the trial of the information. A further condition shall be that, if upon the hearing on the information, the judgment of the court is that such property, or any part thereof, or such interest and equity as the owner or lien holder may have therein, is forfeited, judgment may thereupon be entered against the obligors on such bond for the penalty thereof, without further or other proceedings against them thereon, to be discharged by the payment of the appraised value of the property so seized and forfeited, and costs. Upon such judgment, execution may issue, on which the clerk shall endorse, "No security to be taken." Upon giving of the bond, the property shall be delivered to the owner or lien holder.

§ **19.2-386.7**. Sale of property liable to deterioration.

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

§ **19.2-386.8**. Exemptions.

The following exemptions shall apply to property otherwise subject to forfeiture:

1. No conveyance used by any person as a lawfully certified common carrier in the transaction of business as a common carrier may be forfeited under the provisions of this section unless the owner of the conveyance was a consenting party or privy to the conduct giving rise to forfeiture or knew or had reason to know of it.
2. No conveyance may be forfeited under the provisions of this section for any conduct committed by a person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof.
3. No owner's interest may be forfeited under this chapter if the court finds that:
 - a. He did not know and had no reason to know of the conduct giving rise to forfeiture;
 - b. He was a bona fide purchaser for value without notice; and
 - c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or implied.
4. No lien holder's interest may be forfeited under this chapter if the court finds that:
 - a. The lien holder did not know of the conduct giving rise to forfeiture at the time the lien was granted;
 - b. The lien holder held a bona fide lien on the property subject to forfeiture and had perfected the same in the manner prescribed by law prior to seizure of the property; and
 - c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or implied.

In the event the interest has been sold to a bona fide purchaser for value in order to avoid the provisions of this chapter, the Commonwealth shall have a right of action against the seller of the property for the proceeds of the sale.

§ **19.2-386.9**. Appearance by owner or lien holder.

Any person claiming to be an owner or lien holder of the named property may appear at any time within thirty days after service on him of notice to appear or on or before the date certain set forth in any order of publication under § 8.01-317 or such longer time as the court in its discretion may allow to prevent a miscarriage of justice. Any person without actual or constructive notice of the forfeiture proceedings claiming to be an owner or lien holder may appear at any time before final judgment of the trial court and be made a party to the action. Such appearance shall be by answer, under oath, which shall clearly set forth (i) the nature of the defendant's claim; (ii) the exact right, title or character of the ownership or interest in the property and the evidence thereof; and (iii) the reason, cause, exemption or defense he may have against the forfeiture of the property.

§ **19.2-386.10**. Trial.

A. A party defendant who fails to appear as provided in § 19.2-386.9 shall be in default. The forfeiture shall be deemed established as to the interest of any party in default upon entry of judgment as provided in § 19.2-386.11. Within twenty-one days after entry of judgment, any party defendant against whom judgment has been so entered may petition the Department of Criminal Justice Services for remission of his interest in the forfeited property. For good cause shown and upon proof that the party defendant's interest in the property is exempt under subdivision 2, 3 or 4 of § 19.2-386.8, the Department of Criminal Justice Services shall grant the petition and direct the state treasury to either (i) remit to the party defendant an amount not exceeding the party defendant's interest in the proceeds of sale of the forfeited property after deducting expenses incurred and payable pursuant to subsection B of § 19.2-386.12 or (ii) convey clear and absolute title to the forfeited property in extinguishment of such interest.

If any party defendant appears in accordance with § 19.2-386.9, the court shall proceed to trial of the case, unless trial by jury is demanded by the Commonwealth or any party defendant. At trial, the Commonwealth has the burden of proving that the property is subject to forfeiture under this chapter. Upon such a showing by the Commonwealth, the claimant has the burden of proving that the claimant's interest in the property is exempt under subdivision 2, 3 or 4 of § 19.2-386.8. The proof of all issues shall be by a preponderance of the evidence.

B. The information and trial thereon 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.

§ **19.2-386.11**. Judgment of condemnation; destruction.

A. If the forfeiture is established, the judgment shall be that the property be condemned as forfeited to the Commonwealth subject to any remission granted under subsection A of § 19.2-386.10 and further that the same be sold, unless (i) a sale thereof has been already made under § 19.2-386.7, (ii) the court determines that the property forfeited is of such minimal value that the sale would not be in the best interest of the Commonwealth or (iii) the court finds that the property may be subject to return to a participating agency. If the court finds that the property may be subject to return to an agency participating in the seizure in accordance with subsection C of § 19.2-386.14, the order shall provide for storage of the property until the determination to return it is made or, if return is not made, for sale of the property as provided in this section and § 19.2-386.12. If sale has been made, the judgment shall be against the proceeds of sale, subject to the rights of any lien holder whose interest is not forfeited. If the property condemned has been delivered to the claimant under § 19.2-386.6, further judgment shall be against the obligors in the bond for the penalty thereof, to be discharged by the payment of

the appraised value of the property, upon which judgment, process of execution shall be awarded and the clerk shall endorse thereon, "No security is to be taken."

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

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

§ **19.2-386.12**. Sale of forfeited property.

A. Any sale of forfeited property shall be made for cash, after due advertisement. The sale shall be by public sale or other commercially feasible means authorized by the court in the order of forfeiture and shall vest in the purchaser a clear and absolute title to the property sold subject to the rights of any lien holder whose interest is not forfeited. The proceeds of sale, and whatever may be realized on any bond given under § 19.2-386.6, and any money forfeited shall be paid over to the state treasury into a special fund of the Department of Criminal Justice Services in accordance with § 19.2-386.14.

B. In all cases of forfeiture under this section, the actual expenses incident to the custody, preservation, and management of the seized property prior to forfeiture, the actual expenses incident to normal legal proceedings to perfect the Commonwealth's interest in the seized property through forfeiture, and the actual expenses incident to the sale thereof, including commissions, shall be taxed as costs and shall be paid to the person or persons who incurred these costs out of the net proceeds from the sale of such property. If there are no proceeds, the actual expenses shall be paid by the Commonwealth from the Criminal Fund. Actual expenses in excess of the available net proceeds shall be paid by the Commonwealth from the Criminal Fund. The party or parties in interest to any forfeiture proceeding commenced under this section shall be entitled to reasonable attorney's fees and costs if the forfeiture proceeding is terminated in favor of such party or parties. Such fees and costs shall be paid by the Commonwealth from the Criminal Fund.

The residue, if any, shall be paid and disbursed as provided in subsection A of § 19.2-386.10 and § 19.2-386.14 and regulations promulgated by the Criminal Justice Services Board.

§ **19.2-386.13**. Writ of error and supersedeas.

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

§ **19.2-386.14**. Sharing of forfeited drug assets.

A. All cash, negotiable instruments and proceeds from a sale conducted pursuant to § 19.2-386.7 or § 19.2-386.12, after deduction of expenses, fees and costs as provided in § 19.2-386.12, shall, as soon after entry of the forfeiture as is practicable, be paid over to the state treasury into a special fund of the Department of Criminal Justice Services for distribution in accordance with this section. The forfeited property and proceeds, less ten percent, shall be made available to federal, state and local agencies to promote law enforcement in accordance with this section and regulations adopted by the Criminal Justice Services Board to implement the asset-sharing program.

The ten percent retained by the Department shall be held in a nonreverting fund, known as the Asset Sharing Administrative Fund. Administrative costs incurred by the Department to manage and operate the asset-sharing program shall be paid from the Fund. Any amounts remaining in the Fund after payment of these costs shall be used to promote state or local law-enforcement activities. Distributions from the Fund for these activities shall

be based upon need and shall be made from time to time in accordance with regulations promulgated by the Board.

B. Any federal, state or local agency or office that directly participated in the investigation or other law-enforcement activity which led, directly or indirectly, to the seizure and forfeiture shall be eligible for, and may petition the Department for, return of the forfeited asset or an equitable share of the net proceeds, based upon the degree of participation in the law-enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law-enforcement effort with respect to the violation of law on which the forfeiture is based. Upon finding that the petitioning agency is eligible for distribution and that all participating agencies agree on the equitable share of each, the Department shall distribute each share directly to the appropriate treasury of the participating agency.

If all eligible participating agencies cannot agree on the equitable shares of the net proceeds, the shares shall be determined by the Criminal Justice Services Board in accordance with regulations which shall specify the criteria to be used by the Board in assessing the degree of participation in the law-enforcement effort resulting in the forfeiture.

C. After the order of forfeiture is entered, any seizing agency may petition the Department for return of any forfeited motor vehicle, boat or aircraft or other tangible personal property which is not subject to a grant or pending petition for remission. Where all the participating agencies agree upon the equitable distribution of the tangible personal property, the Department shall return the property to those agencies upon finding that (i) the agency meets the criteria for distribution as set forth in subsection B and (ii) the agency has a clear and reasonable law-enforcement need for the forfeited property.

If all eligible participating agencies cannot agree on the distribution of the property, distribution shall be determined by the Criminal Justice Services Board as in subsection B, taking into consideration the clear and reasonable law-enforcement needs for the property which the agencies may have. In order to equitably distribute tangible personal property, the Criminal Justice Services Board may require the agency receiving the property to reimburse the Department in cash for the difference between the fair market value of the forfeited property and the agency's equitable share as determined by the Criminal Justice Services Board.

D. All forfeited property, including its proceeds or cash equivalent, received by a participating state or local agency pursuant to this section shall be used to promote law enforcement but shall not be used to supplant existing programs or funds. The Board shall promulgate regulations establishing an audit procedure to ensure compliance with this section.

Appendix D Criminal Justice Services Board Rules and Regulations for Asset Sharing Program

RULES RELATING TO THE FORFEITED ASSET SHARING PROGRAM

Pursuant to the provisions of §19.2-386.4, 386.10, and 386.14, the Criminal Justice Services Board hereby promulgates the following regulations for the Forfeited Asset Sharing Program:

§ 1. Definitions

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

Agency means any federal, state or local agency or office that directly participated in the investigation or other law-enforcement activity which led directly or indirectly to the seizure and forfeiture.

Agency administrator means any Chief of Police, Sheriff, and Commonwealth's Attorney or agency head of a federal, state or local agency, or office.

Asset means any property or interest in property, whether tangible or intangible, real or personal.

Board means the Criminal Justice Services Board.

Chief Administrative Officer means the officer vested with the administrative and executive function of a political subdivision (e.g. city manager, county manager, etc.), or in the case of an executive branch agency, the director, administrator, superintendent or other equivalent position as provided by law, unless such agency operates under a Supervisory Board as defined in *Code of Virginia* §9-6.25:3, in which case the chairman of the Supervisory Board shall be deemed "Chief Administrative Officer."

Department or DCJS means the Department of Criminal Justice Services.

Designated Seizing Agency means the agency or office which initiates the seizure, or which retains possession of the seized property. Designated seizing agency may include the agency chosen by mutual decision of the participating agencies.

Director means the chief administrative officer of the Department of Criminal Justice Services.

In-kind Property in this context means the actual property other than cash seized, forfeited and returned to the seizing agency for law enforcement purposes. In-kind property includes property that is exchanged for original in-kind property.

Proceeds means actual cash forfeited, and the cash value returned from the sale of forfeited property, including property that may have been returned "in-kind" and sold during a one year period or for a value greater than \$500.

§2. Applicability

The following regulations apply to all agencies or offices, in so far as they participate in the seizure and forfeiture of drug assets under Virginia law.

§3. Asset Seizure

A. Property subject to seizure under §19.2-386.22, that is seized with the intent to forfeit to the Commonwealth and retain the property or proceeds for law enforcement use pursuant to Chapter 22.1 of Title 19.2 must be reported to the Department provided that the property or cash value exceeds five hundred dollars (\$500).

B. The agency administrator of the designated seizing agency will file a DCJS Form 998, Asset Seizure Reporting Form, within twenty-one (21) days of seizure. This form calls for detailed information regarding the description and location of property. If more than one agency participates in the seizure the names and addresses of agency administrators shall be reported to the Department on the Form 998.

§4. Report of Proceeds, Costs and Asset Sharing Agreements

Once the court has ordered disposition of the forfeited asset(s) pursuant to § 19.2-386.11, the designated seizing agency will file a DCJS Form 999, Seized Property Disposition/Sharing Decision Form, with the Department. This form should be accompanied by:

1. Copy of the court order.
2. Petition for In-Kind Property
3. List of Costs Incurred to Manage Seized Assets
4. Cashier's Check or Money Order in the amount of the Net Forfeited Proceeds (total proceeds minus amount for costs incurred that are allowable under 19.2-386.12 or other costs if approved by the court) made payable to the Treasurer of Virginia

§5. Remission of Innocent Property Interests

1. Petitions for remission by innocent property holders or innocent lien holders shall be filed with the Department of Criminal Justice Services, at 805 East Broad Street, Richmond, VA 23219. Petitions for remission shall contain such information as will allow the Department to identify the forfeiture involved, including the name of the Circuit Court from which the forfeiture was ordered. The petition shall clearly and specifically allege the grounds upon which petitioner seeks remission, and the statutory basis for relief.

§6. Valuation of "In-Kind" Property for purposes of distribution

1. Valuation of In-Kind property shall be done in all cases of distribution upon which there is not agreement among participating jurisdictions.
2. Evidence of value shall be submitted by the agency seeking possession of the property, and may be submitted by any participating agency.
3. Evidence of value may be submitted in any form, including appraisals, assessments, references to "book value", etc., as the submitting agency deems necessary to establish the Fair Market Value (FMV) of the property.
4. Final determination of Fair Market Value shall be made by the Criminal Justice Services Board based upon a review of all evidence of value presented to it.
5. The cost of an appraisal will be recognized as a cost incident to the custody, preservation, and management of the property, and may be reimbursed to the agency submitting the appraisal from total forfeiture funds prior to the distribution of net proceeds. If there are not proceeds to be distributed, the cost of appraisal will not be reimbursed.

§7. Distribution Procedures for Proceeds and "In-Kind" Property

A. Distribution of “In-Kind” property when all parties are in agreement.

1. The submission of a DCJS Form 999, with all attachments, including the agreement between the law enforcement agencies shall constitute a petition for return of in-kind property when there is agreement between the agencies as to the disposition of such in-kind property when there is agreement between the agencies as to the disposition of such in-kind property. These petitions shall be treated by the Department as approved, provided that the clear and reasonable law enforcement need for the forfeited property has been demonstrated [Section 19.2-386.14 C (ii)] in the petition.
2. If the Department cannot ascertain the “clear and reasonable law enforcement need for the forfeited property”, it may seek such additional information as will allow it to make the determination.
3. If the Department is unable to determine the “clear and reasonable law enforcement need for the forfeited property” it shall submit the question to the next regularly scheduled meeting of the Criminal Justice Services Board for determination.

B. Distribution of disputed "in-kind property.

1. Any participating agency or office may petition the Department for the return of any forfeited motor vehicle, boat or aircraft, or other tangible personal property within ten (10) days of the court's finding of compliance with Section 19.2-386.14 A. (iii).
2. The petition for return of “in-kind” property shall be on the petitioning agency’s letterhead, and shall contain the name, address, telephone number, and name of the agency administrator in the participating jurisdictions known to have been involved in the seizure and forfeiture.
3. Petitions shall be filed with the Department at 202 N. Ninth Street, Richmond, VA 23219.
4. Upon receipt of a disputed petition for distribution of “in-kind” property, the Department shall notify the Chairman of the Criminal Justice Services Board, and the process for resolution contained In the section of these regulations for Joint Agency Sharing of Forfeited Assets shall be implemented. This shall include the mailing of notices for responsive petitions.
5. Findings by the committee or the Board shall include, without limitation, the following:
 - a. A determination of the Fair Market Value of the “in-kind” property.
 - b. A determination of the proportional share due to each participating jurisdiction involved in the forfeiture.
 - c. An amount, if any, which a participating agency must pay to the Department to keep the property, and set a reasonable time for the agency to pay that amount to the Department.
 - d. A determination of the “clear and reasonable law enforcement need for the forfeited property”.

C. Joint Agency Sharing of Forfeited Assets

- 1 . In all cases in which there is agreement between participating agencies for the distribution of proceeds or in-kind property, distribution shall be made by the Department according to the terms of the agreement contained on Form 999, or evidence of agreement attached to that form, subject to a petition challenging the agreement and subject to concurrence by the Board of a reasonable law enforcement need for the in-kind property pursuant to §7.A (3).

2. Any agency or office not in agreement as to the distribution of forfeited proceeds may petition the Criminal Justice Services Board for a proportional share of the proceeds.
3. The petition shall be filed on the letterhead of the participating agency and shall identify all other participating agencies or offices.
4. The petition shall identify the proportional share of proceeds to which the petitioning agency believes it is entitled and the grounds upon which it relies for that determination.
5. The petition shall be filed at the Department of Criminal Justice Services, 202 N. Ninth St., 10th Floor, Richmond, VA 23219.
6. The petition shall be filed within twenty-one (21) days of the entry of the court's forfeiture order in the case.
7. Upon receipt of the petition for participation in distribution, the Department shall forward copies of the petition to all known participating agencies or offices with a request for a responsive petition.
8. The Agency Administrator shall file responsive petitions at DCJS within fourteen (14) days of receipt.
9. Upon receipt at DCJS of all petitions related to a particular forfeiture, or upon expiration of the time for receipt of all petitions, DCJS shall prepare a decision package for the Forfeited Assets Distribution Committee.

D. Hearing

1. Upon receipt of a petition raising any question or contesting any distribution with the authority of these regulations, the petition shall be referred to the Chairman of the Forfeiting Assets Distribution Committee (FADC) of the Criminal Justice Services Board.
2. The Chairman of the FADC shall designate a time and place for the committee to meet.
3. Meetings shall be held no later than forty-five (45) days after receipt of a petition for contested distribution, unless continued from time to time as required.
4. All participating agencies or offices shall be notified of the time and place of the meeting.
5. The FADC or Board shall consider the following criteria in reviewing petitions brought before it:
 - a. General:
 1. The degree of participation in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based.
 - b. Specific:
 1. Whether the agency or office originated the information that lead to the seizure, and whether the agency obtained such information by use of its investigative assets, or through fortuitous events;

2. Whether the agency provided unique or indispensable assistance;
3. Whether the agency initially identified the asset or seizure;
4. Whether the agency seized other assets during the course of the same investigation and whether such seizures were made pursuant to state law;
5. Whether the agency could have achieved forfeiture under federal law, with favorable consideration given to an agency which could have forfeited the assets on its own, but joined forces with another agency to produce a more effective investigation;
6. Upon reviewing all petitions and arguments in the case, and after weighing the factors and criteria listed in these regulations, the FADC or Board shall determine, by majority vote, the proportional share of the proceeds, and shall direct the Department to distribute the proceeds according to law;
7. A decision of the FADC will be final for purposes of distribution of forfeited assets, unless, within ten (10) days of the FADC decision, a participating agency notifies the Department of an appeal to the Criminal Justice Services Board;
8. Appeals of FADC decisions shall be placed on the agenda of the next Criminal Justice Services Board meeting;
9. Appeals of FADC decisions will be heard by the full Board upon the report of the Committee, and upon such additional evidence and information as introduced during the meeting by participating agencies or offices.
10. The decision on appeal by the Criminal Justice Services Board shall be final.

§8 Certification

A. Prior to disbursement of proceeds by the Department, the chief administrative officer of the participating jurisdiction shall sign, on its official stationary, the following certification:

“I certify that the proceeds applied for and any income or interest derived therefrom will be used for law enforcement purposes, and will not be used to supplant existing funds from any source whatsoever.”

B. Agencies or offices that participate in the distribution of property or proceeds under Chapter 22. 1 of Title 19.2, agree to maintain records of the use and handling of the respective proceeds or property and any income or interest derived there from for a period of three years from receipt. The Department may audit the records of the forfeited assets at any time during those three years, and shall report the findings of any such audit to the Criminal Justice Services Board.

C. The Department requires that all participants in the Forfeited Asset Sharing Program submit an annual financial statement of receipts and expenditures related to the program, certifying that the proceeds applied for and any income or interest derived there from was used for law enforcement purposes and was not used to supplant existing funds from any source. This certification and a financial statement must be submitted to the Department six months after the close of the designated fiscal year.

**Memorandum of Understanding
Regional Narcotic Enforcement Task Force**

Introduction

In _____, the chief law enforcement officials in the towns/cities of _____, _____, and _____, with the counties of _____, _____, and _____, counties in conjunction with the Virginia State Police, Bureau of Criminal Investigation, identified the need for a regional narcotics enforcement task force, the primary purpose of which would be to initiate enforcement action directed at those individuals/organizations that have been identified as major multi-jurisdictional violators. It was the considered opinion of those present that such a Task Force would have a positive multi-jurisdictional impact on illegal drug trafficking in these jurisdictions.

The Regional Narcotic Enforcement Task Force's goals and objectives will be to target, investigate, and prosecute individuals/organizations who deal in quantity of narcotics and *who* impact on the jurisdictions signatory to this agreement.

The Task Force will not be restricted to any particular narcotics.

These goals and objectives will be accomplished by making maximum use of the full range of law enforcement techniques and skills available to the participants.

Agreement

This agreement for furnishing police services is made and entered into this ____ day of _____, _____ by and among signatories hereto.

WHEREAS: All parties agree that it is to their mutual benefit to cooperate in the enforcement of the controlled substance laws as set forth in Virginia Code Section 18.2-247 et seq., as amended.

Now, therefore, the parties jointly resolve and agree to the establishment of a Regional Narcotics Task Force, hereinafter referred to as "TASK FORCE", the purpose of which is to improve the enforcement of the controlled substance laws as set forth in Virginia Code Section 18.2-247 et seq., as amended, and the parties further agree to the following:

- A. The Task Force will be governed by a Command Group, the members of which will be comprised of the Chiefs of Police of the towns/cities of _____, _____, and _____ and the Sheriffs of _____, _____, and _____ counties, along with a supervisor of the Virginia State Police, Bureau of Criminal Investigation. The purpose of the Command Group is to set the goals and objectives of the Task Force, meet and establish the policy and procedures that the Task Force will operate under. These policies and procedures will be attached as a part of this agreement as Addendum #1.
- B. The Task Force coordinator will be supervised by the Command Group. The Task Force coordinator will prepare and distribute a monthly report of activities of the Task Force to each member of the Command Group. He will also take minutes of Command Group Meetings.

- C. A minimum of one (1) experienced officer from each jurisdiction, and the Virginia State Police, Bureau of Criminal Investigation will be detailed to the Task Force for a minimum of one year. During the period of this agreement a member of the Virginia State Police/Bureau of Criminal Investigation will coordinate the Task Force. Any replacement assigned will join the Task Force two (2) weeks prior to the date of change to help ensure continuity on the Task Force.
- D. All salaries, overtime, pension, relief, disability, Workers' Compensation, other expenses and benefits enjoyed by Task Force members in their parent organization shall extend to their assignment to this Task Force.
- E. Conduct which requires disciplinary action against a Task Force member will be reported to the appropriate official of the member's agency for action.
- F. Each party shall identify the other parties to this agreement from all claims by third parties for property damage or personal injury which may arise out of the activities of such parties officers assigned to the Task Force. Each party shall waive any and all claims against all the other parties hereto which may arise out of the Task Force's activities.
- G. Participating police officers serving under this agreement shall not become involved with matters other than those pertaining to possible violations of narcotics laws, except as required by State Law, nor shall they make arrests outside of their individual jurisdictions when conducting general investigative activities not associated with a narcotics investigation, except as required by State Law.

All participating agencies will provide the following equipment to support the activities of the officers assigned to the Task Force:

- A. Undercover type vehicles, including costs of repair and maintenance.
- B. Technical equipment, including tape recorder, binoculars, 35 mm camera, telephone, pager, vest and other support items when available.

The cost, if necessary for secretarial assistance, office space, utility, telephone and any other expenses shall be shared equally by participating agencies.

The Virginia State Police, Bureau of Criminal Investigation agrees to provide equipment for the Task Force activities as follows:

- A. Virginia State Police radio and communications system to each full-time Task Force member, when available.
- B. Virginia State Police, Bureau of Criminal Investigation agrees to seek special State Police authority for members assigned on a full-time basis to this Task Force. Such authority to be used only as specified/authorized in written instruction to be provided.
- C. Virginia State Police, Bureau of Criminal Investigation, through its Drug Trust Account and Criminal Investigation funds, agrees to provide:
 - 1. Assistance for payments to informants for information and services in Task Force cases. The amount to be in accordance with Virginia State Police, Bureau of Criminal Investigation policy concerning payment to informants.
 - 2. Assistance for the purchase of drugs as evidence in Task Force cases in keeping with Virginia State Police, Bureau of Criminal Investigation policy.
 - 3. Flash rolls for furtherance of Task Force investigations, on an as-needed basis, in keeping with Virginia State Police, Bureau of Criminal Investigation policy.

a. Accounting for funds indicated in 1, 2, and 3, will be reported in the same method and on the same forms as prescribed by the Virginia State Police, Bureau of Criminal Investigation policies.

All parties agree that all assets seized by the task force will be shared equally among all participating agencies, however, prior to the sharing of any assets seized by this task force during an investigation, all expenses for informants and/or drug purchases made in that investigation with funds from participating agencies will be reimbursed to those agencies to the extent that forfeited assets are available.

This agreement shall remain in effect until terminated by the parties hereto, upon written notice, setting forth the date of such termination. Withdrawal from this agreement by one party hereto shall be made by written notice to the other parties thirty (30) days prior to said withdrawal. Withdrawal by one party shall terminate the agreement among the signatories hereto.

IN WITNESS HEREOF, the parties hereto have executed this agreement.

ATTEST:

County of BY: _____

County of BY: _____

County of BY: _____

Town/City of BY: _____

Town/City of BY: _____

Town/City of BY: _____

Virginia State Police BY: _____

Virginia

IN THE CIRCUIT COURT OF THE CITY OF

WARRANT FOR THE ARREST OF PROPERTY

IN RE: {DESCRIPTION OF THE PROPERTY}

TO: Any authorized law enforcement officer

The Commonwealth of Virginia, by counsel, having made information that the above referenced property was used in substantial connection with, or represents the proceeds from, the manufacture, sale, or distribution of controlled substances or marijuana, YOU ARE COMMANDED to forthwith take into custody the above referenced property and to keep it safely and in good order until this property is disposed of by this Court.

By: _____

Deputy Clerk

Virginia

IN THE CIRCUIT COURT OF THE CITY OF

IN RE:
{DESCRIPTION OF PROPERTY}

TO: {LIST NAME(S) AND
ADDRESS(ES) OF ALL OWNERS
OR LIENHOLDERS OF RECORD}

Docket #: _____

NOTICE OF SEIZURE

TAKE NOTICE that on {DATE OF SEIZURE}, the above referenced property was seized by law enforcement authorities of the Commonwealth of Virginia at {LOCATION OF SEIZURE} because it was involved in a violation of §19.2-386.22 of the *Code of Virginia* (1950), as amended, in that it was used in substantial connection with, or represents proceeds from, the manufacture, sale, or distribution of controlled substances or marijuana.

COMMONWEALTH OF VIRGINIA

By: _____
Commonwealth's Attorney

Virginia

IN THE CIRCUIT COURT OF THE CITY OF

COMMONWEALTH OF VIRGINIA

v.

{DESCRIPTION OF THE PROPERTY}

Docket #: _____

and

**{LIST THE NAME AND ADDRESS OF
EACH OWNER OR LIENHOLDER}**

NOTICE TO APPEAR

WHEREAS, the Commonwealth of Virginia, by counsel, has informed this Court that property in which you may have an interest was used in substantial connection with, or represents proceeds from, the manufacture, sale, distribution, or the possession with intent to distribute a controlled substance or marijuana.

THEREFOR, each owner or lien holder of record is advised that if there is an objection to the forfeiture of their interest in this property, they must appear according to law within thirty days of service upon them of this information or by the date set forth in any order of publication and file an answer under oath setting forth (i) the nature of their claim, (ii) the exact right, title, or character of the ownership or interest in the property and the evidence thereof, and (iii) the reason, cause, exemption, or defense they may have against the forfeiture of their interest in the property.

Clerk of the Circuit Court

Virginia

IN THE CIRCUIT COURT OF THE CITY OF

COMMONWEALTH OF VIRGINIA

v.

{DESCRIPTION OF THE PROPERTY}

Docket #: _____

and

{LIST THE NAME(S) AND ADDRESS(ES) OF EACH OWNER OR LIENHOLDER}

INFORMATION

COMES NOW the Commonwealth of Virginia, by {NAME OF PROSECUTOR}, Commonwealth's Attorney, and informs the Court that on or about {DATE OF SEIZURE}, the defendant property was used in substantial connection with, or represents the proceeds from, the manufacture, sale, or distribution of controlled substances or marijuana in violation of §19.2-386.22 of the *Code of Virginia* (1950) as amended.

WHEREFORE, the Commonwealth requests that said property be condemned and forfeited to the Commonwealth according to law.

COMMONWEALTH OF VIRGINIA

By: _____
{NAME OF PROSECUTOR}
Commonwealth's Attorney

COMMONWEALTH OF VIRGINIA
CITY OF VIRGINIA BEACH, to-wit:

This day personally appeared before me, a Notary Public in and for the City and State aforesaid, {NAME OF PROSECUTOR} and made oath that the above statements are, to the best of {HIS/HER} knowledge, true and accurate.

Given under my hand this _____ day of _____, _____.

NOTARY PUBLIC

My Commission expires: _____

Virginia

IN THE CIRCUIT COURT OF THE CITY OF

COMMONWEALTH OF VIRGINIA

v.

{DESCRIPTION OF THE PROPERTY}

Docket #: _____

and

{NAME OF EACH OWNER OR LIENHOLDER}

ORDER OF FORFEITURE

THIS CAUSE came to be heard upon the Information filed by the Commonwealth to appear and show cause why {DESCRIPTION OF THE PROPERTY} should not be forfeited to the Commonwealth under the provisions of §19.2-386.1 et seq. of the *Code of Virginia* (1950) as amended; and

IT APPEARING to the Court that {NAME OF OWNER} appeared by counsel; and

IT FURTHER APPEARING to the Court that {NAME OF LIENHOLDER} appeared in person; and

IT FURTHER APPEARING to the Court that said property was used in substantial connection with, or represents the proceeds from, the manufacture, sale, or distribution of controlled substances or marijuana in violation of §19.2-386.22 of the *Code of Virginia* (1950) as amended; and

IT FURTHER APPEARING to the Court that {NAME OF LIENHOLDER} did not know of, and had no reason to know of, the illegal conduct giving rise to this forfeiture;

IT IS THEREFORE ADJUDGED, ORDERED, and DECREED that {DESCRIPTION OF THE PROPERTY} be forfeited to the Commonwealth and condemned and sold according to law; and

IT IS FURTHER ORDERED that the proceeds of such sale shall be distributed as follows: 1) All expenses relating to the storage, maintenance, and sale of the property shall be paid; 2) Satisfaction of the lien held by {NAME OF LIENHOLDER} in the amount of {BALANCE OF LIEN}; and 3) the balance, if any, to be paid over to the Department of Criminal Justice Services for distribution according to law.

ENTER this _____ day of _____, _____.

Judge

I ask for this:

Attorney for the Commonwealth

**** This form is for use when the property is to be sold and there is an innocent lien holder.**

Virginia

IN THE CIRCUIT COURT OF THE CITY OF

COMMONWEALTH OF VIRGINIA

v.

{DESCRIPTION OF THE PROPERTY}

Docket #: _____

and

{NAME AND ADDRESS OF EACH OWNER OR LIENHOLDER}

ORDER OF FORFEITURE

THIS CAUSE came to be heard upon the Information filed by the Commonwealth to appear and show cause why {DESCRIPTION OF THE PROPERTY} should not be forfeited to the Commonwealth under the provisions of §19.2-386.1 et seq. of the *Code of Virginia* (1950) as amended; and

IT APPEARING to the Court that {NAME OF OWNER} appeared/failed to appear according to law after proper notice of this action; and

IT FURTHER APPEARING to the Court that said property was used in substantial connection with, or represents the proceeds from, the manufacture, sale, or distribution of controlled substances or marijuana in violation of §19.2-386.22 of the *Code of Virginia* (1950) as amended; and

IT FURTHER APPEARING to the Court that this property is suitable for law enforcement use;

IT IS THEREFORE ADJUDGED, ORDERED, and DECREED that {DESCRIPTION OF THE PROPERTY} be stored pending disposition by the Department of Criminal Justice Services of any petition for the return of said property for law enforcement use.

ENTER this ____ day of _____, ____.

Judge

I ask for this:

Attorney for the Commonwealth

**** This form is for use when the property is to be returned "In-Kind".**

Virginia

IN THE CIRCUIT COURT OF THE CITY OF

COMMONWEALTH OF VIRGINIA

v.

{DESCRIPTION OF THE PROPERTY SEIZED}

Docket #: _____

and

{NAME OF EACH OWNER OR LIENHOLDER}

ORDER OF FORFEITURE

THIS CAUSE came to be heard upon the Information filed by the Commonwealth to appear and show cause why {DESCRIPTION OF THE PROPERTY} should not be forfeited to the Commonwealth under the provisions of §19.2-386.1 et seq. of the *Code of Virginia* (1950) as amended; and

IT APPEARING to the Court that {NAME OF OWNER(S)} failed to appear according to law after proper notice of this action; and

IT FURTHER APPEARING to the Court that said property was used in substantial connection with, or represents the proceeds from, the manufacture, sale, or distribution of controlled substances or marijuana in violation of §19.2-386.22 of the *Code of Virginia* (1950) as amended;

IT IS THEREFORE ADJUDGED, ORDERED, and DECREED that {DESCRIPTION OF THE PROPERTY} be forfeited to the Commonwealth and condemned and sold according to law; and

IT IS FURTHER ORDERED that the proceeds of such sale shall be distributed as follows: 1) All expenses relating to the storage, maintenance, and sale of the property shall be paid; 2) the balance, if any, to be paid over to the Department of Criminal Justice Services for distribution according to law.

ENTER this ____ day of _____, _____.

Judge

I ask for this:

Attorney for the Commonwealth

**** This form is for use when there is a default judgment & no lien holder**

Police/Sheriff’s Department General Order

Subject: ASSET FORFEITURES

Number: _____

Effective Date: _____

Review Date: _____

Amends/Supersedes: _____

Approved: _____
Police Chief/Sheriff

NOTE: This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS: asset forfeiture
narcotics
drug enforcement

I. POLICY:

A recent constitutional amendment to state law permits law enforcement agencies to benefit directly from the seizures made in narcotics or drug Investigations. Formerly, in order to receive financial assistance through seized assets, law enforcement agencies had to use the federal forfeiture process. We intend to aggressively enforce narcotics and dangerous drugs laws, and where our personnel make a substantial seizure of property according to state law, we will begin forfeiture proceedings. Whatever assets we recover through the forfeiture process, whether money or property, will be applied to legitimate enforcement needs, primarily to carry out other drug enforcement strategies. Under no circumstances will personnel select enforcement targets because of the expected financial gain accruing to the department: enforcement strategies are not dictated by profit.

II. PURPOSE:

To outline the department’s participation in asset forfeitures from drug enforcement cases, and to state responsibilities of the asset forfeiture coordinator.

III. DEFINITIONS:

A. Asset forfeiture coordinator (AFC): the officer designated by the chief/sheriff to be conversant in state forfeiture law (to wit, *Code of Virginia* Chapter 22.1, particularly Sections 19.2-386.1-386.14), to identify assets in case records and implement legal process to appropriate these assets for department use. The AFC will also perform as liaison to the Forfeiture Asset Dispute Committee, Criminal Justice Research Board, other state and federal agencies, and the courts, as needed.

B. Designated seizing agency: the agency or office that initiates the seizure, or which retains possession of the seized property. The designated seizing agency may be the agency chosen by mutual decision of the participating agencies.

C. Assets: Includes both in-kind property and proceeds. In-kind property consists of whatever an agency can put to immediate use. Anything of value seized in association with a drug transaction is an asset for purposes of this order. Proceeds refer to whatever money is raised through sale of property of a kind not immediately useful.

IV. PROCEDURES:

A. Responsibilities of the asset forfeiture coordinator (AFC).

1. Review all police reports to identify property subject to forfeiture.
2. Ensure that all seizures for forfeitures are reported to the Department of Criminal Justice Services
3. Report to the assistant chief of police/chief deputy on all matters pertaining to forfeiture proceedings.
4. Choose and coordinate with vendors hired to manage seized property.
5. Coordinate, when possible, with other agency representatives, as designated by the chief/sheriff, for “pre-seizure” planning meetings to evaluate target assets to ascertain ownership and the existence of liens or encumbrances.
 - a. The planning effort will make every reasonable effort to identify innocent lienholders to avoid inconveniencing them.

If the agency wishes to participate in state forfeiture procedures, the AFC shall:

6. Coordinate with the Commonwealth’s Attorney to enter a default judgment against persons who fail to respond to the court within 30 days to defend against seizure of their property.
7. Apply to DCJS for return of in-kind property for legitimate law enforcement use.
8. Coordinate with the Commonwealth’s Attorney, or other officials as necessary to obtain a commercial sale of property in appropriate cases.
9. Coordinate with other agencies participating in a regional drug enforcement task force to agree on which agency will become the designated seizing agency for purposes of forfeiture proceedings. Negotiate with participating law enforcement agencies for a suitable division of assets.
 - a. Where agencies seize property pursuant to membership in a regional task force, the AFC will forward to DCJS a copy of the interagency agreement or contract that authorizes the task force.
 - b. The AFC will assist inter-jurisdictional coordination to ensure that localities maintain separate forfeitures accounts and auditing procedures. Similarly, the AFC will track cases in which the department is involved but is not the primary seizing agency.
10. Ensure that the locality's certification (that the proceeds will be used for law enforcement purposes only and will not supplant existing resources) is submitted to DCJS, and renewed annually by the county/city manager.
11. Ensure that money seized is forwarded to DCJS in check form. Coordinates with the local finance officer, as necessary.

[NOTE: If the Finance officer is a member of the law enforcement agency, the following responsibilities should be included in the agency order. If the finance officer serves the town or county, then the following responsibilities should be included in a job description or other town/county document]

B. The agency finance officer shall:

1. Prepare checks to DCJS as soon as possible upon receipt by the agency of forfeited funds from drug transactions.
2. Prepare and maintain records on all property accruing to the agency through drug forfeitures and retain these records for a minimum of three years.

3. Annually conduct an audit of all property seized attendant to drug transactions, including an audit of all property subjected to forfeiture proceedings. Forward a copy of all audits to DCJS upon request.
4. Compile and retain a file of all receipts for cash or property obtained and sold or otherwise disposed of through asset forfeiture procedures.

C. If the agency elects to pursue forfeiture through federal proceedings, then the AFC will not notify DCJS.

WHAT CAN I DO WITH THE FORFEITED MONEY?

According to §19.2-386.14 (D) of the *Code of Virginia*, “all forfeited property, including its proceeds or cash equivalent, received by a participating state or local agency pursuant to this section shall be used to promote law enforcement but shall not be used to supplant existing programs or funds.” But what exactly does that mean? Below you will find an excerpt from the U.S. Department of Treasury’s “Guide to Equitable Sharing for Foreign Countries and Federal, State and Local Law Enforcement Agencies.” This excerpt outlines the federal guidelines regarding how asset forfeiture money can be used. For the sake of consistency, Virginia has chosen to follow these guidelines.

USES OF EQUITABLY SHARED PROPERTY

A. General Guidance Concerning Use

1. Equitably Shared Property Should Not be Anticipated - Do not “spend it before you get it” or anticipate receipts. For example, assume that a local law enforcement agency has filed a TD F 92-22.46 to request a 50% share of \$100,000. The \$50,000 should not be budgeted for three reasons:

- a. the completion of the forfeiture is uncertain
- b. the amount of the sharing that will ultimately be approved is also uncertain;
- c. net proceeds have not been determined

2. Increase and Not Replace (Supplement vs. Supplant) - Sharing must be used to increase or supplement the resources of the receiving state or local law enforcement agency. Shared resources **shall not be used** to replace or supplant the resources of the recipient. In determining whether the sharing increased or supplemented the receiving agency, the **total law enforcement budget will be considered** as opposed to any particular item or items within the budget. In other words, the receiving law enforcement agency's aggregate budget must benefit directly from the sharing.

If for example, a police department receives \$100,000 in equitable sharing, only to have its budget cut \$100,000 by the city council, the police department has received no direct benefit whatsoever. Rather, the city as a whole has received the benefit of the equitable sharing.

3. Use of Interest Income - Interest on forfeited cash or proceeds is subject to the same restrictions as the shared cash or proceeds.

4. Prohibited Sharing - Forfeited firearms may not be shared with foreign countries, state or local enforcement agencies.

B. Uses of Shared Cash or Proceeds of Forfeited Property

1. Permissible Uses: Subject to laws, rules, regulations, and orders of the state or local jurisdiction governing the use of public funds available for law enforcement purposes, the following expenses are pre-approved as permissible uses of shared funds and property.

a. Activities Calculated to Enhance Future Investigations -- The support of investigations and operations that may result in further seizures and forfeitures, e.g., payments to informants; “buy”, “flash”, or reward money; and the purchase of evidence.

b. Law Enforcement Training -- The training of investigators, prosecutors, and law enforcement support personnel in **any** area that is necessary to perform official law enforcement duties. Some examples of such training are the following: (1) asset forfeiture in general (statutory requirements, policies, procedures, caselaw); (2) the Fourth Amendment (search and seizure, probable cause, drafting affidavits, confidential informant reliability); (3) ethics and the National Code of Professional Conduct for Asset Forfeiture; (4) due process rights; (5) protecting the rights of innocent third-parties (individuals and lienholders); (6) use of computers or other equipment used in or in support of law enforcement duties. **The payment of college tuition, hospitality suites at conferences, and other indirect training expenses are not allowed.**

c. Law Enforcement Equipment and Operations -- The purchase of body armor, firearms, radios, cellular telephones, computer equipment, software to be used in support of law enforcement purposes, vehicles (e.g., patrol vehicles, surveillance vehicles), electronic surveillance equipment, uniforms, travel, transportation, supplies, leasing of office and other space for task force and undercover operations, and leasing or purchase of other types of equipment that support law enforcement activities. Forensic labs and equipment and related training and certification expenses are permissible.

d. Detention Facilities -- The costs associated with construction, expansion, improvement, or operation of detention facilities managed by the recipient agency.

e. Law Enforcement Facilities and Equipment -- The costs associated with basic and necessary facilities, their construction, updating, remodeling, furniture, safes, file cabinets, telecommunications equipment, etc., that are necessary to perform official law enforcement duties.

f. Drug Education and Awareness Programs -- The costs associated with conducting drug education and awareness programs by law enforcement agencies.

g. Pro Rata Funding -- The costs associated with supporting multi-agency items or facilities. **Example:** A town purchases a new computerized payroll system; the police department payroll represents twenty percent of the total use of the payroll system. The police department may use shared money to fund its pro rata share (twenty percent) of the operating and maintenance expenses of the system.

h. Asset Accounting and Tracking -- The costs associated with the accounting, auditing, and tracking of revenues and expenditures of equitable shared cash, proceeds, and tangible property.

i. Salaries -- Many of the costs of the activities described above could entail the payment of salaries of the personnel involved. Due to the extreme sensitivity of asset forfeiture work, **the payment of salaries of sworn law enforcement officers** is limited to the following categories:

- Overtime.
- The first year's salaries only for new law enforcement officers that supplement the workforce.
- Contractual appointments that do not exceed one year.
- Salaries of officers assigned to non-traditional positions in approved specialized programs, which do not generally involve traditional law enforcement functions such as DARE officers.
- Payments expressly authorized by law, such as the Community Oriented Policing Services (COPS) program established by the Violent Crime Control and Law Enforcement Act of 1994, which expressly permits state and local law enforcement agencies to use equitably shared asset forfeiture funds to meet the local match requirements of that program.
- Salaries of sworn law enforcement officers hired to replace officers assigned to a federal task force. A law enforcement agency may expend equitably shared funds to pay the salaries of replacement officers for the life of the task force and up to six months after the task force has disbanded.

The above expenses are not meant to be all inclusive and other expenses may be permissible. Guidance from the Treasury Executive Office for Asset Forfeiture must be sought for any proposed use of shared cash or proceeds that could be questioned as to its law enforcement purpose.

NOTE: The fact that the shared property was forfeited as a result of a particular federal violation does not limit its use. For example, when an agency receives a share of property that was forfeited for a federal drug violation, the shared property does not have to be used in a department's drug program. Priority consideration should be given, however, to completely equipping units that generate forfeitures in order to foster future forfeiture investigations.

2. Impermissible Uses:

a. Uses of Forfeited Property by Non-Law Enforcement Personnel -- Use of a shared vehicle or other forfeited tangible property by non-law enforcement personnel for non-law enforcement business.

b. Payment of Non-Law Enforcement Expenses -- Shared funds may be used to pay the expenses for drug testing of law enforcement personnel, but may not be used for the testing of all municipal employees.

c. Uses Not Specified in the TD F 92-22.46 -- Requesting state and local agencies must specify on the TD F 92-22.46 what uses will be made of the shared property. Any departure from such stated uses must be approved in writing by the Treasury Executive Office for Asset Forfeiture, unless the use is already specified in paragraph B.1 of this section.

d. Uses Contrary to the Laws of the State or Local Jurisdiction -- Shared funds may not be used for any purpose that would constitute an improper use of state or local law enforcement funds under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.

e. Non-Official Government Use of Shared Assets -- Any use that creates the appearance that shared funds are being used for political or personal purposes.

SAMPLE BOOKKEEPING PROCEDURES

1. Establish a separate revenue account or accounting code through your Department of Finance for the proceeds from the Department of the Treasury equitable sharing program. This account or accounting code should also receive any interest income generated by the funds and must be used in accordance with the provisions of this Guide. This account or accounting code will be *solely for the use of Treasury sharing proceeds*.
2. Maintain a log and copies of all TD F 92-22.46 forms forwarded to the Department of the Treasury. A consecutive numbering system should be used for control purposes. The log should contain seizure type (property and currency), amount, share amount requested, amount received, and date received.
3. Update the log when funds are received from the Department of the Treasury. The amount received may differ from the amount requested.
4. Designate all checks as restrictive and have them endorsed by the responsible individual immediately upon receipt. Deposit all funds into the revenue account on the date received or no later than the next business day.
5. Safeguard all checks received if not deposited on the day received. Physically place checks in a safe, locked cash box, locked drawer, or other secured place.
6. For equitable sharing payments transmitted by Electronic Funds Transfer (EFT), the deposits must be reconciled with the log that is used to record sharing payments.
7. Upon final approval, contracts or purchase orders may be issued to formally disburse deposited assets for goods or services. Purchase orders and contracts are encumbered, or charged against the revenue account balance.
8. Maintain a record of all expenditures from the revenue account or accounting code. These expenditures must be in accordance with this *Guide*.