



Indiana Prosecuting Attorneys Council FY 2019 Forfeiture Report

Civil forfeiture is a device, a legal fiction, authorizing legal action against inanimate objects for participation in alleged criminal activity, regardless of whether the property owner is proven guilty of a crime—or even charged with a crime.¹

Many of Indiana’s prosecuting attorneys file *in rem* civil suits for the forfeiture of property. Property is seized – and subject to forfeiture – when it is used to assist with the commission of a crime or when it is traceable as profits from a crime.² Vehicles found transporting illegal drugs are examples of the first type of property.³ The cash a heroin trafficker collects from sales is an example of the second type⁴ as are the things the dealer buys with the profits.⁵ Once property is declared forfeit, it is distributed to law enforcement, the Common School Fund, and to any private counsel retained to represent the State,⁶ a distribution framework that was recently found constitutional by the Indiana Supreme Court.⁷

In 2014, by court order, the Indiana Supreme Court established that Indiana would be a leader in electronic filing.⁸ Litigants would no longer have to wait in line before they could step up to a counter to watch as their documents were file stamped and shuffled off in manila folders.

In 2015, the Indiana General Assembly passed legislation requiring that Indiana’s 91 prosecuting attorneys report on the State’s forfeiture collections.⁹ The initial reporting requirements were expanded in 2018.¹⁰ Prosecutors file the required report with the Indiana Prosecuting Attorneys Council (the IPAC).¹¹ In turn, the IPAC is required to “(A) compile forfeiture data . . . and (B) annually submit a report to the legislative council containing the compiled data.”¹²

To meet the demand for e-filing, the IPAC modified its case management system, the Indiana Prosecutor Case Management System (the INPCMS), so that it could serve as an electronic filing service provider. A forfeiture module was also added to the INPCMS. The IPAC has asked

¹ Serrano v. State, 946 N.E.2d 1139, 1140 (Ind. 2011).

² A list of property subject to forfeiture and the crimes to which the property must be connected is found at Ind. Code § 34-24-1-1.

³ See, e.g., Cantrell v. Putnam County Sheriff’s Dep’t, 894 N.E.2d 1081 (Ind. Ct. App. 2008).

⁴ See, e.g., Caudill v. State, 613 N.E.2d 433 (Ind. Ct. App. 1993).

⁵ See, e.g., Mesa v. State, 5 N.E.3d 488 (Ind. Ct. App. 2014).

⁶ IND. CODE § 34-24-1-4. The authorization to employ outside counsel is found at *id.* § 34-24-1-8.

⁷ Horner v. Curry, 18S-PL-333, --N.E.3d --, -- 2019 Ind. LEXIS – available at <https://www.in.gov/judiciary/opinions/archsup.html>.

⁸ *In re* Electronic Filing and Electronic Service in all Indiana Courts, No. 94S00-1405-MS-347 (Ind. May 21, 2014) available at <https://www.in.gov/judiciary/files/order-other-2014-94S00-1405-MS-347.pdf>.

⁹ See 237-2015 Ind. Acts 3617.

¹⁰ See 47-2018 Ind. Acts 270, 276-7.

¹¹ See I.C. § 34-24-1-4.5.

¹² I.C. § 33-39-8-5 (7).

prosecutors to enter their forfeiture cases into the INPCMS whether or not e-filing is available in their circuit.¹³ What follows is the data summarizing the 890 forfeiture cases that were finalized between July 1, 2018 and June 30, 2019, as recorded in the INPCMS.

890	Number of Cases Closed
0	Number of Contested Cases
9	Number of Cases with a Settlement
4	Number of Cases with Claim from Innocent Owner

\$342,701.63	Returned to Owner (Defendant)
\$227,386.49	Paid to Common School Fund
\$175,444.20	Attorney Fees Paid
\$1,273,326.65	Paid to Prosecutors
\$54,942.59	Paid to Indiana State Police
\$37,554.56	Paid to Sheriffs
\$1,187,537.82	Paid to Police Departments
\$588,787.71	Paid to Other Law Enforcement Agencies
\$3,544,980.02	Total Not Returned to Owner (Defendant)

162	Number of Vehicles Forfeited
12	Number of Firearms Forfeited
0	Real Property Forfeited
869	Number Other Items Forfeited
135	Number of Items Returned Owner (Defendant)

¹³ The IPAC is told that it “may adopt rules under I.C. 4-22-2 to implement [the reporting requirement].” I.C. § 33-39-8-5 (7). The IPAC has not adopted rules because the rulemaking authority found in chapter 4-22-2 is for executive branch agencies. *See* I.C. § 4-22-2-3. The IPAC is an independent judicial branch agency. Again, instead of adopting rules for the reporting, the IPAC has asked that prosecutors simply record their forfeitures in the INPCMS.

Federal law enforcement agencies are also authorized to seize property and subject it to forfeiture.¹⁴ When agents of the federal government, such as agents from the DEA and the FBI, work with state and local agencies, the state and local partners will typically receive a share of the property forfeited as reimbursement for their participation.¹⁵ It is also possible for the federal government to “adopt” state cases.¹⁶

Federal authorities do not distribute forfeiture assets in such a way that it is possible to determine what assets – particularly liquid assets – are traceable to any particular case. It is not possible to accurately record this data in the INPCMS. It is possible to establish through the INPCMS what property is being taken from suspects in Indiana and given to federal authorities for adjudication. The following summarizes data from 66 forfeiture cases, as recorded in the INPCMS, that were picked up in the federal system between July 1, 2018 and June 30, 2019.

9	Number of Vehicles Forfeited
0	Number of Firearms Forfeited
0	Real Property Forfeited
82	Number Other Items Forfeited
\$1,367,016	Cash

¹⁴ See 18 U.S.C. § 981.

¹⁵ See *id.* at § 981(e)(2)

¹⁶ There is no direct authority allowing for federal adoption of a state forfeiture case, but it can be inferred. See *id.* at § 981(b)(2)(C) (“Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if . . . the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency”). In any event,

An “adopted” forfeiture—or “adoption” for short—occurs when a state or local law enforcement agency seizes property under state law, without federal oversight or involvement, and requests that a federal agency take the seized asset into its custody and proceed to forfeit the asset under federal law. Federal forfeiture law addresses the federal adoption of seizures by state and local agencies.