

Indiana Prosecuting Attorneys Council FY 2022 Forfeiture Report

Introduction. Many of Indiana’s prosecuting attorneys file *in rem* civil suits for the forfeiture of property.¹ 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 This distribution framework has been found constitutional by the Indiana Supreme Court.⁷

Background. 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 travel to the courthouse to file their documents.

In 2015, the Indiana General Assembly passed legislation requiring that Indiana’s 91 prosecuting attorneys report on the State’s forfeiture collections.⁹ These 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 e-filing requirement, 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 to help prosecuting attorneys and the IPAC meet the reporting requirement. The IPAC has asked prosecutors to enter their forfeiture cases into the INPCMS.¹³

¹ “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.” *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 I.C. § 34-24-1-4. The authorization to employ outside counsel is found at *id.* § 34-24-1-8.

⁷ *Horner v. Curry*, 125 N.E.3d 584 (Ind. 2019).

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 *Id.* at § 33-39-8-5 (7).

¹³ The IPAC “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. *See id.* at § 33-39-8-2. Again,

Fiscal Year 2022 Data. The following tables summarize the 519 forfeiture cases, recorded in the INPCMS, finalized between July 1, 2021 and June 30, 2022.

519	Number of Cases Closed
0	Number of Contested Cases
18	Number of Cases with a Settlement
0	Number of Cases with Claim from Innocent Owner

\$683,760.39	Returned to Owner (Defendant)
\$286,281.80	Paid to Common School Fund
\$563,811.56	Attorney Fees Paid
\$948,181.08	Paid to Prosecutors
\$262,600.68	Paid to Indiana State Police
\$176,093.18	Paid to Sheriffs
\$1,293,684.93	Paid to Police Departments¹⁴
\$2,217,340.60	Paid to Other Law Enforcement Agencies¹⁵
\$5,747,993.83	Total Not Returned to Owner (Defendant)

instead of adopting rules for the reporting, the IPAC has asked that prosecutors simply record their forfeitures in the INPCMS.

¹⁴ In this category the prosecuting attorney’s office or the contract attorney has recorded the amount distributed to the lead law enforcement agency on the case. Usually, but not always, this is the county’s main police department in counties with more than one police department – e.g., the Indianapolis Metropolitan Police Department in Marion County.

¹⁵ This category would include police departments other than the main police department. Most civil forfeiture actions stem from the illegal drug trade. Investigations into that type of activity is often conducted by multiple law enforcement agencies. For example, if the Gary, Hobart, and Hammond police departments undertook a joint investigation that led to the seizure and forfeiture of money derived from drug trafficking, the money distributed to the lead agency would be recorded in the INPCMS as “paid to police department” and the money distributed to the other two agencies would be recorded as “paid to other law enforcement agencies.”

93	Number of Vehicles Forfeited
13	Number of Firearms Forfeited
0	Real Property Forfeited
501	Number of Other Items Forfeited
72	Number of Items Returned to owner (Defendant)

Federal law enforcement agencies are also authorized to seize property and subject it to forfeiture.¹⁶ When personnel 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.¹⁷ It is also possible for the federal government to “adopt” state cases.¹⁸

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. Thus, it is not possible to accurately record this data in the INPCMS. It is possible to establish what property is being taken from suspects in Indiana and given to federal authorities for adjudication. The following summarizes data from 62 forfeiture cases, as recorded in the INPCMS, that were turned over to federal authorities between July 1, 2021 and June 30, 2022.

4	Number of Vehicles Forfeited
40	Number of Firearms Forfeited
0	Real Property Forfeited
68	Number of Other Items Forfeited
\$3,258,569.10	Money Forfeited

¹⁶ See 18 U.S.C. § 981.

¹⁷ See *id.* at § 981(e)(2).

¹⁸ 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.