

CHAPTER 77

ATTORNEY GENERAL'S STANDARDS FOR THE EQUITABLE DISTRIBUTION TO CONTRIBUTING LAW ENFORCEMENT AGENCIES OF FORFEITED PROPERTY

Authority

N.J.S.A. 2C:64-6.

Source and Effective Date

R.1993 d.90, effective January 22, 1993.
See: 24 N.J.R. 4492(a), 25 N.J.R. 710(b).

Executive Order No. 66(1978) Expiration Date

The expiration date of Chapter 77, Attorney General's Standards for the Equitable Distribution to Contributing Law Enforcement Agencies of Forfeited Property, was extended by gubernatorial directive from January 22, 1998 to March 23, 1998. See: 30 N.J.R. 703(b).

Chapter Historical Note

Chapter 77, Attorney General's Standards for the Equitable Distribution to Contributing Law Enforcement Agencies of Forfeited Property, was adopted as R.1988 d.63, effective February 1, 1988. See: 19 N.J.R. 1534(b), 20 N.J.R. 296(a). Pursuant to Executive Order No. 66(1978), Chapter 77 was readopted as R.1993 d.90. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

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SUBCHAPTER 1. GENERAL PROVISIONS

13:77-1.1 Purpose

(a) The standards in this chapter govern the division and distribution of property forfeited pursuant to N.J.S.A. 2C:64-1 et seq. The standards are promulgated to provide guidance and prior notice regarding the procedures governing the use of forfeited property and to ensure the equitable distribution of such property in accordance with the statutory intent. When property is forfeited as a result of the combined efforts of more than one law enforcement agency, each law enforcement agency contributing to the forfeiture is to share proportionately in the forfeiture proceeds. Where property cannot be divided, the general policy is to sell the property and divide the proceeds among all participating law enforcement agencies. The forfeited property shall be used solely for law enforcement purposes and shall be divided in a manner which will enhance law enforcement efforts and cooperation. It is recognized that standards for division of the property among agencies must be promulgated in order to foster a consistency of result through a balanced approach. It is further recognized that a too rigid method of apportionment of forfeited property would often not provide the best use of the property and thus not fully serve the law enforcement interests of New Jersey as a whole. The standards in this chapter are intended to further these general purposes and shall be interpreted accordingly.

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

Case Notes

Six-month suspension for attorney who committed third-degree theft. Matter of Hoerst, 135 N.J. 98, 638 A.2d 801 (1994), reinstatement granted 138 N.J. 85, 648 A.2d 722.

13:77-1.2 Legal authority

(a) Under N.J.S.A. 2C:64-6 and N.J.S.A. 2C:64-7, the Attorney General or the county prosecutor, whichever is the prosecuting agency, is to divide the forfeited property according to each law enforcement agency's contribution to the surveillance, investigation, arrest or prosecution which resulted in the forfeiture.

(b) These standards are promulgated pursuant to the authority of the Attorney General to establish rules and regulations governing the division and distribution of forfeited property under N.J.S.A. 2C:64-6.

13:77-1.3 Delegation of authority of Attorney General in apportionment

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

13:77-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Contributive share" means the proportionate share of forfeited property which is allocated by the prosecuting agency in the exercise of its discretion to any participating law enforcement agency based on the participating law enforcement agency's relative contribution to the surveillance, investigation, arrest or prosecution.

"Entity" means the funding entity or entity having budgetary control over a participating law enforcement agency. In the case of a State law enforcement agency, that entity shall be the State Treasury.

"Forfeited property" means property, proceeds and monies seized and subject to a confirming final judgment pursuant to N.J.S.A. 2C:64-3.

"Investigative unit" means a State law enforcement investigative agency, bureau, division, section or other unit that engages in criminal investigations, surveillances or arrests and which is under the control, direction or supervision of a department of the State.

"Law enforcement purpose" means a purpose which is calculated to enhance a law enforcement agency's ability to conduct criminal investigations, surveillances, arrests and prosecutions and to respond more fully to the effects of crime and, for purposes of these rules, shall be beyond that allocated by the law enforcement agency's annual budget. A law enforcement purpose shall include expenditures to defray the costs of protracted or complex investigations; to educate the public in crime prevention techniques; to provide additional technical assistance or expertise, which may, for example, include participation in funding the purchase of Statewide automated fingerprint identification equipment, an automated uniform offense and arrest report system, the purchase of surveillance and undercover transportation and investigation equipment, and computer hardware and software to enhance the coordination of intelligence information among the law enforcement agencies of a county and the State; to provide matching funds to obtain Federal law enforcement enhancement grants, or for such other purposes as the Attorney General may from time to time authorize.

"Participating law enforcement agency" means a law enforcement agency, including a State investigative unit or a county multi-agency strike force or task force, which substantially contributes to the surveillance, investigation, arrest or prosecution which results in a forfeiture.

"Prosecuting agency" means either the Attorney General or the county prosecutor, whichever in a particular case bears the responsibilities for prosecuting the defendant or filing the forfeiture action.

"State law enforcement agency" means any department of the State which by itself or through any subordinate investigative unit or other agency, which it controls, directs or supervises, engages in law enforcement activities. The Department of Law and Public Safety shall be the State law enforcement agency for all investigative activity conducted by its investigative units.

SUBCHAPTER 2. DISPOSITION OF AUTHORITY**13:77-2.1 Contraband**

Property defined in N.J.S.A. 2C:64-1 which has been forfeited shall be destroyed if it can serve no lawful purpose or it presents a danger to the public health, safety or welfare.

13:77-2.2 Law Enforcement Trust Fund for prosecuting agency

All forfeited property other than contraband, or any proceeds resulting from the forfeiture and all monies seized or forfeited, shall become the property of the entity funding the prosecuting agency effecting the forfeiture, and shall if feasible be placed in a dedicated Law Enforcement Trust Fund established by that entity. All interest or income earned on or with forfeited property in the Law Enforcement Trust Fund shall remain in the Trust Fund to be used for the payment of asset maintenance costs and to assure liquidity of the fund to pay other costs, such as security interests, and may not be used for any other purpose without prior approval by the Attorney General. Property or moneys needed as evidence shall be maintained separately and, when approved by the prosecuting agency, shall be transferred to the Law Enforcement Trust Fund.

Petition for Rulemaking.
See: 25 N.J.R. 3243(b).

13:77-2.3 Disbursements from Law Enforcement Trust Fund

(a) The property, proceeds and moneys shall be distributed from the dedicated Law Enforcement Trust Fund in the following order:

1. Security interests: When the prosecuting agency effecting the forfeiture has decided to retain the forfeited property, upon which there are recorded liens, for law enforcement use, and there are sufficient monies deposited in the Law Enforcement Trust Fund, payments shall first be made from the Fund to any innocent lessor or any other innocent person holding a perfected security interest in the forfeited property, up to the amount of his or her interest in that property. Payment for security interests shall be a ministerial function of the funding entity upon the request of the prosecuting agency.

2. Asset maintenance and forfeiture prosecution costs: Before shares are calculated based on each law enforcement agency's relative contribution, payment from the Law Enforcement Trust Fund will be made to the entity funding the prosecuting agency for certain direct, out-of-pocket costs. Where applicable, and upon the direction of the prosecuting agency, the funding entity shall compensate any other person, entity or agency for payment of these costs. The asset maintenance and forfeiture prosecution costs shall be paid by the funding entity upon demand by the prosecuting agency before distribution from the Law Enforcement Trust Fund of the remainder of the forfeited property. These reimbursable costs shall include expenses incurred for the care, custody and disposal of the seized and forfeited property, such as, for example, filing and recording fees, brokerage fees, advertising costs, insurance or bond premiums, appraisal or inspection fees, service, repair, restoration, maintenance or storage fees, and any necessary costs incurred to protect the value of an asset, including, for example, the

costs of operating any business enterprise. The funding entity responsible for maintaining and administering the Law Enforcement Trust Fund may be reimbursed for the reasonable expense of administering the Trust Fund, upon the approval of the prosecuting agency.

3. Contributive share: After deductions are made for security interests and asset maintenance and forfeiture prosecution costs, payments shall be made from the Law Enforcement Trust Fund to the participating law enforcement agency—State, county, local or other—through its funding entity, where the law enforcement agency contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to that agency's relative contribution as determined by the prosecuting agency pursuant to N.J.A.C. 13:77-4.1 and 13:77-4.2. Payment shall be made to the Special Law Enforcement Fund established for the participating law enforcement agency by its funding entity.

13:77-2.4 Forfeiture fund for participating law enforcement agency

(a) The contributive share of a county or municipal participating law enforcement agency shall be placed in a Special Law Enforcement Fund established by the entity funding the law enforcement agency which receives the forfeited property. All interest or income earned on or with this forfeiture fund shall remain in the fund for the sole use of the law enforcement agency. Moneys in a Special Law Enforcement Fund shall be used for law enforcement purposes only and may not be used for payment of regular salaries or to create new personnel positions, to pay dues or fees in an organization that represents any interest other than a law enforcement interest, such as a bar association, or to pay any expense imposed as a condition of maintaining professional standing, such as the FAIR Act Attorney Fee. If approved by the Attorney General, forfeiture funds may be used to pay the salaries of temporary employees hired for a specific function, such as persons with a special expertise which is needed for a particular investigation. Funds may be expended from the forfeiture fund only upon the request of the participating law enforcement agency, accompanied by a written certification that the request complies with the provisions of this chapter, and only upon appropriation to the participating law enforcement agency in accordance with the accepted budgetary provisions of its funding entity. Any expenditure of forfeiture funds, like the expenditure of other public funds, shall be subject to the bidding requirements of the funding entity.

(b) Forfeited property, proceeds or moneys, and interest or income thereon, distributed to a State level law enforcement agency or which remains in the State Law Enforcement Trust Fund shall be placed in a dedicated fund or funds established in the Department of Treasury. This fund shall be administered by the department of the State responsible for the State law enforcement agency, and moneys from the fund shall be apportioned by the head of the

responsible State department, in his or her discretion, to the various participating investigative units and other law enforcement agencies which are under its control or direction. The department head of the responsible department of State may not use the forfeiture funds for payment of regular salaries or to create new personnel positions without the approval of the Department of Treasury and in conformity with applicable law, except that the Attorney General may authorize payment of the salary of a temporary employee.

Amended by R.1993 d.90, effective February 16, 1993.
See: 24 N.J.R. 4492(a), 25 N.J.R. 710(b).

Revised (a).
Petition for Rulemaking.
See: 25 N.J.R. 3243(b).

13:77-2.5 Use of forfeiture funds

Funds derived from forfeited property may be expended only for law enforcement purposes as defined in N.J.A.C. 13:77-1.4. All expenditures are subject to certification of availability by the funding entity, which certification should not be unreasonably and untimely withheld. Forfeiture funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency. No funding entity shall anticipate forfeitures or proceeds therefrom in the adoption and approval of the budget for its law enforcement agency.

Petition for Rulemaking.
See: 24 N.J.R. 3243(b).

Case Notes

Six-month suspension; attorney who committed third-degree theft. Matter of Hoerst, 135 N.J. 98, 638 A.2d 801 (1994), reinstatement granted 138 N.J. 85, 648 A.2d 722.

SUBCHAPTER 3. DISPOSITION OF INDIVISIBLE FORFEITED PROPERTY

13:77-3.1 Policy for disposing indivisible forfeited property

Where forfeited property, including motor vehicles, cannot be divided as required by N.J.S.A. 2C:64-7, the general policy of this State shall be to sell the property and divide the proceeds as set forth in N.J.A.C. 13:77-4.1 and 13:77-4.2, rather than to retain the property for law enforcement use. Where, however, full value cannot be obtained for indivisible forfeited property and where the property is needed for law enforcement use, the prosecuting agency effecting the forfeiture may determine to retain the forfeited property for official use.

13:77-3.2 Procedures for disposing indivisible forfeited property

If the prosecuting agency decides to distribute indivisible forfeited property to a participating law enforcement agency, the participating law enforcement agency must reimburse the entity funding the prosecuting agency for any moneys that were expended by that entity in furtherance of securing a perfected interest in or clear title to the forfeited property. If the participating law enforcement agency does not agree to such reimbursement, or if other agreement cannot be reached by all interested parties, the forfeited property shall be sold and the proceeds shall be distributed as set forth in N.J.A.C. 13:77-4.1 and 13:77-4.2.

13:77-3.3 Certain prohibitions on acquisition

No office-holder, employee or other agent of any prosecuting agency causing the sale of forfeited property, their spouses or dependent children shall purchase or otherwise acquire, through such sale, title to forfeited property.

New Rule, R.1993 d.90, effective February 16, 1993.
See: 24 N.J.R. 4492(a), 25 N.J.R. 710(b).

SUBCHAPTER 4. APPORTIONMENT OF FORFEITED PROPERTY

13:77-4.1 Procedures for apportioning forfeited property

(a) Calculation of the contributive share of any participating law enforcement agency is to be determined in the discretion of the prosecuting agency. The distribution decision of the prosecuting agency shall generally reflect the relative contribution of any law enforcement agency participating in any of the acts which led to the seizure or forfeiture of the property.

(b) A participating law enforcement agency shall submit a written request for distribution on an approved form within 10 days of the seizure and file the request with the prosecuting agency. Where the prosecuting agency intends to seek a share of the forfeited property, it is to document its own prosecution costs on a written request form which shall be retained and made available for the review of any other participating law enforcement agency. The request by any law enforcement agency must include an identification of the property against which the claim is made; details regarding the law enforcement agency's participation, including the amount of money and manpower expended in pursuing the case; the intended use of the property; and an estimate of the relative percentage contribution of each participating law enforcement agency.

13:77-4.2 Criteria for apportioning forfeited property

(a) In determining the contributing share of any participating law enforcement agency, the prosecuting agency shall consider the following enumerated factors:

1. The amount of money directly expended in pursuing the case: These funds, while "out-of-pocket" costs of the case itself, generally are not directly tied to an asset seized for forfeiture. Thus, these expenditures are not to be included with the asset maintenance and forfeiture prosecution costs of N.J.A.C. 13:77-2.3(a)2 which are to be deducted prior to calculation of the law enforcement agency's contributive share. Payments for information or assistance relating to or in furtherance of a law enforcement investigation are costs associated with the underlying criminal investigation itself, independent of a forfeiture action. Nevertheless, because the expended money represents an identifiable out-of-pocket expense, the prosecuting agency shall generally reimburse such costs as fully as possible in determining a law enforcement agency's contributive share.

2. The agency which initiated the case: The initiating law enforcement agency may well have been able to proceed with a criminal investigation without the assistance of others. To the extent that agency collaborated with other law enforcement agencies to further an investigation and develop a more significant case, it should not "lose" the value of an asset which it may in the normal course, and without assistance from other law enforcement agencies, have obtained independently. In these circumstances, the contributive share of the initiating law enforcement agency may be calculated in a greater than pure percentage contribution fashion in order to encourage and foster future law enforcement cooperation. Furthermore, the agency which initiated the case may have made an insignificant manpower contribution to the forfeiture. For example, a stop by a State Trooper could result in a find of a large cache of drug money. The few moments expended by the trooper would be far less than that expended in the prosecution of the case itself, which could, indeed, result in a major prosecution if the investigation could ascend the drug distribution hierarchy. Nevertheless, the "but for" nature of the trooper's act may warrant a greater contributive share for his agency than would be calculated solely by considering manpower or costs expended.

3. The agency which identified the asset: An asset may, for example, be identified as subject to forfeiture by using evidence contained in financial records, just as inconsistencies between one's net worth or purchases and legitimate known sources of income can reveal illegal income. Investigative accounting techniques may show that unlawfully acquired income was used to infiltrate or purchase a business or indirectly to acquire other apparently legitimate property. Thus, demonstration of a connection between the proceeds of crime and property would enable the forfeiture of that asset. Under these circumstances, the law enforcement agency's identification of the asset or business as an ultimate product of criminal activity could significantly expand the value of forfeiture in a particular case and may be appropriately rewarded.

4. The manpower expended in pursuing the case, including overtime costs: Manpower expenditures provide a reasonable indication of a law enforcement agency's efforts in pursuing a case, and thus its contribution to the overall law enforcement effort. It will undoubtedly be difficult or impossible to be completely accurate, however, in evaluating this cost, since officers will rarely work on only one case.

5. The law enforcement agency actively participates in and contributes personnel or other resources to a multi-jurisdictional task force.

6. The relative needs of the law enforcement agencies involved: Generally, these needs are not to be a factor in calculating a contributive share. In an unusual case involving a particularly large forfeiture, however, this would become a consideration in order to assure that forfeited assets are in fact used to enhance law enforcement efforts. The Attorney General, as chief law enforcement officer of the State, or the prosecutor, as chief law enforcement officer of a county, should, in making a decision distributing forfeited property, take into account the needs of the law enforcement agencies within his jurisdiction. Thus, from a public policy perspective, the prosecuting agency may in its discretion determine that division of forfeited property be made other than in a purely mathematical allocation based on contribution.

7. Alternative availability of the asset to the agency in the near future from other seizures: If two participating law enforcement agencies are equally entitled to forfeited property or proceeds and one of the agencies, but not the other, regularly obtains forfeited funds, it is proper to consider that fact in calculating a contributive share. In general, of course, contributive shares are to be calculated on each participating law enforcement agency's relative contribution. Nevertheless, as discussed above, a factor to consider in dividing forfeitures is the overall effect on law enforcement within the State. Where tangible and indivisible property is to be distributed (see N.J.A.C. 13:77-3.2), the prosecuting agency, in deciding which participating law enforcement agency is to have the use of the property, should consider whether either agency may be able to obtain similar property alternatively in the near future.

Amended by R.1993 d.90, effective February 16, 1993.

See: 24 N.J.R. 4492(a), 25 N.J.R. 710(b).

Added new (a)5; redesignated existing (a)5 through 6 as (a)6 through 7.

SUBCHAPTER 5. FEDERAL EQUITABLE TRANSFER

13:77-5.1 Requests for Federal equitable transfers

Notice of all requests, by any law enforcement agency, State, county, local or other, for equitable transfer of forfeit-

ed property pursuant to 21 U.S.C.A. § 881(e) and regulations promulgated pursuant to that section shall be given to the Office of the Attorney General and the appropriate county prosecutor. Such information shall be included in the Attorney General's Annual Report on Seized and Forfeited Property. Federally forfeited property shall be transmitted in accordance with N.J.A.C. 13:72-2.2 to the entity funding the prosecuting agency for distribution by the prosecuting agency pursuant to this chapter.

SUBCHAPTER 6. MONITORING, REPORTING AND AUDITING PROCEDURES

13:77-6.1 Monitoring, reporting and auditing procedures

(a) A law enforcement agency distributing, receiving or expending forfeited property, proceeds or money shall maintain the full records documenting these distributions, receipts and expenditures. Every law enforcement agency distributing, receiving or expending such property or funds shall submit a quarterly report documenting those distributions, receipts and expenditures to the Attorney General and the appropriate county prosecutor, on forms promulgated by the Attorney General. The quarterly report shall specify, for that period, the type, the approximate value, and disposition of the property received and the amount of any proceeds received or expended. In August of each year, every law enforcement agency distributing, receiving or expending forfeited property shall submit a report to the entity funding that agency documenting the distributions, receipts and expenditures of forfeited property or funds.

(b) All county prosecutors and the Attorney General shall maintain record documenting the type of offense, if any, upon which the forfeiture was premised; the amount forfeited; any moneys received from the forfeited property which was sold and the proceeds derived from that sale; as well as any expenditures connected with obtaining a perfected security interest or clear title to the retained forfeited property (see N.J.A.C. 13:77-2.3(a)1) and with maintaining forfeited property and related costs (see N.J.A.C. 13:77-2.3(a)2). When forfeited property is retained for law enforcement use, the justification for not liquidating the asset shall be documented. The above information shall be submitted to the Office of the Attorney General on a quarterly basis and shall be included in the Attorney General's Annual Report on Seized and Forfeited Property.

(c) The Attorney General reserves the right to audit the forfeiture records of any law enforcement agency. This right shall not restrict or impede the Attorney General's supervisory power pursuant to the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., or any other law, rule, regulation, directive, opinion or agreement. The Attorney General may assess the county prosecutors for the cost of conducting annual audits of forfeiture records. These administrative costs shall be within a maximum established by agreement from time to time between the Attorney General and a majority of the county prosecutors, with the costs to be assessed on a pro rata basis among all counties based on the amount of forfeiture funds received within the county.

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

Amended by R.1993 d.90, effective February 16, 1993.

See: 24 N.J.R. 4492(a), 25 N.J.R. 710(b).

Added (d).

SUBCHAPTER 7. PENDING FORFEITURE ACTIONS

13:77-7.1 Distribution of forfeited property

The standards in this chapter shall govern the distribution of all forfeited property for which a judgment of forfeiture is entered on or after December 1, 1986, the effective date of P.L. 1986, c.135 (N.J.S.A. 2C:64-6 and 2C:64-7).