

# EXHIBIT E.1

# Forfeiture

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# Suggested Legislative Priorities

- ◉ Review law and recommend amendments to protect innocent owners;
- ◉ Assure greater transparency; and
- ◉ Provide greater due process while ensuring assets used or obtained through unlawful practices are removed from criminals.

# Agenda

- Forfeiture Overview
- Legislative Concepts
- Q&A

# Forfeiture Overview

Part I



# Agreement

- Police can seize and hold instruments and proceeds based on probable cause they are linked to a suspected crime.
- Crime should not pay.
  - Proceeds
  - Instruments

# Disagreement

- Who should get forfeiture proceeds?
  - Law enforcement: Own budgets.
  - IJ: Legislature/general fund
  
- Should a suspect be convicted of a crime as a prerequisite to forfeiting property?
  - Prosecutors: No. Civil forfeiture.
  - IJ: Yes. Criminal forfeiture.\*

# Proposed Criminal Forfeiture: 1-Track Process

- ◉ Suspect and property enter criminal justice system:
- ◉ Step 1: Suspect is prosecuted;
- ◉ Step 2: If convicted, title to property is litigated.



# Current Civil Forfeiture: 2-Track Process

- Person enters criminal justice system.
- Property enters civil system.
  - In rem jurisdiction (“against the thing.”)
  - Legal fiction property can be found liable.
  - Different burdens and standards of proof for two types of owners:
    - Suspect; or
    - Spouse, parent or other innocent-owner claimant.

# Comparison

## 1-TRACK: CRIMINAL FORFEITURE

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- Miranda warnings
- Right to counsel
- Prompt probable-cause hearing/grand jury
- Property litigation follows criminal prosecution.
- Initial standard: Beyond a reasonable doubt.

## 2-TRACK: CIVIL FORFEITURE

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- None
- None
- None
- Only civil litigation. Criminal prosecution is irrelevant.
- Initial standard: Preponderance of the evidence.

# British History

- British Navigation Acts of the mid-17<sup>th</sup> century.
- King prosecuted ships and cargo.
  - Owners were beyond personal jurisdiction.

# U.S. History

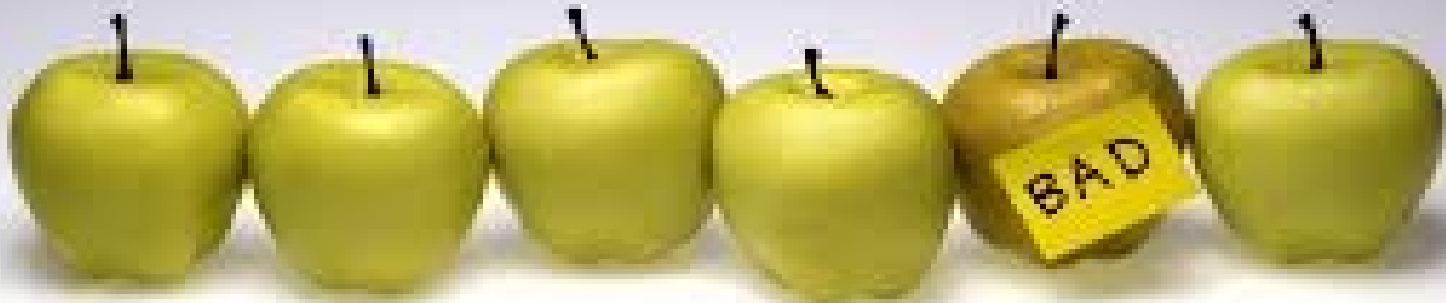
- U.S. Customs Act of July 31, 1789 used civil forfeiture.
  - Owners beyond jurisdiction.
  
- Comprehensive Drug Abuse Prevention & Control Act of 1970. Amended in 1978 to provide for civil forfeiture.
  - Misuse. Suspect is available for arrest and criminal prosecution.

# U.S. History

- Proceeds deposited in general U.S. treasury.
- 1984 change:
  - Funds go to Justice and Treasury Departments' Forfeiture Funds.
  - Usable for “forfeiture-related expenses and various law enforcement purposes.”

# Policy Conclusion

# Laws Matter Not Just One Bad Apple



# Legislation to Meet Your Goals

Part II



# Hierarchy of Forfeiture Reforms



# Goal 1: Protect Innocent Property Owners

- Adopt criminal forfeiture process:
- Suspect
  - First determine if suspect is innocent or guilty.
  - Require a conviction as a prerequisite to forfeiture
- Spouse and other innocent owner claimants
  - First determine if suspect is innocent or guilty.
  - If guilty, no need for change to claimant's process.

# Goal 2: Reporting

## ○ Salutory

## ○ Better information leads to better policy

- Dollar amount of each seizure
- Non-engagement/default judgments
- Age and model of each vehicle seized
- Location of each seizure

## Goal 3: Incentives

- The legislature should control the purse.
- The executive branch controls the sword.
- Keep them separated.

*Table 1 Proceeds Distributed to Law Enforcement*

0%	Indiana, Maine, Maryland, Missouri, North Carolina, North Dakota, Ohio, Vermont
50%	Colorado, Wisconsin
60%	Connecticut, New York
63%	Oregon
65%	California
75%	Nebraska
80%	Louisiana, Mississippi
85%	Florida
90%	Illinois, Minnesota, New Hampshire, Rhode Island, Texas
95%	South Carolina
100%	Alaska, Alabama, Arkansas, Arizona, Delaware, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming

# Goal 4: Threshold on Equitable Sharing

- Two parts of federal Equitable Sharing program:
  - Adoption
  - Joint task forces.
- Don't be Missouri.
- Limit outsourcing of forfeiture litigation to federal attorneys.
  - State prosecutors should litigate under state law
  - Reserve federal forfeiture litigation to big cases.
  - No change to joint task forces or seizure laws
- Protect state sovereignty and legislators' role.

# Conclusion

## • Criminal forfeiture

- Goal: Ensure property owners are criminals
- Goal: Provide greater due process while ensuring assets are removed from criminals
- Modest: Most prosecution is completed by plea bargain

## • Reporting

- Goal: Assure greater transparency
- Modest: No change in seizure or forfeiture procedures

## • Threshold

- Goal: Protects reforms from circumvention to federal government
- Modest: Easily implemented

## • Financial incentive:

- Goal: Impartial administration of the law.
- Modest: Restore legislature's rightful role

# Q&A

## Part III

Public opinion

Other states' reforms

Common arguments and responses

ERAD

Model language

About IJ and its donors



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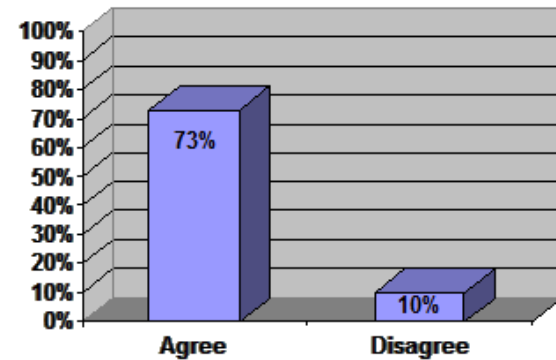
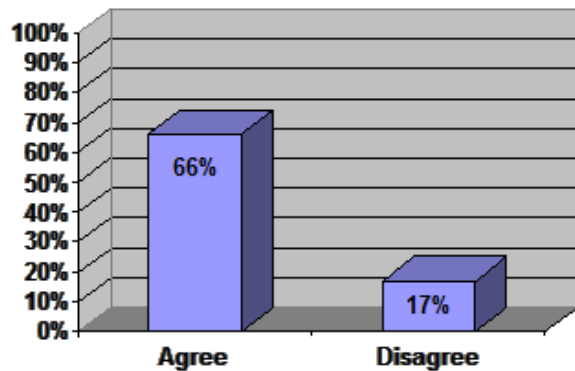


# Appendix

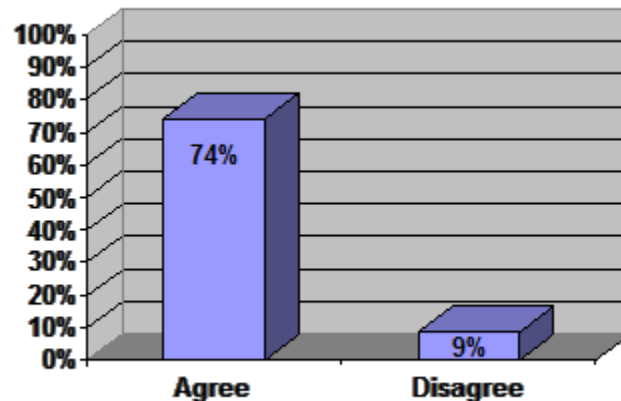
# Public Opinion

Law enforcement should be held to “beyond a reasonable doubt” standard to take property through forfeiture.

Criminal conviction should be required before losing property.

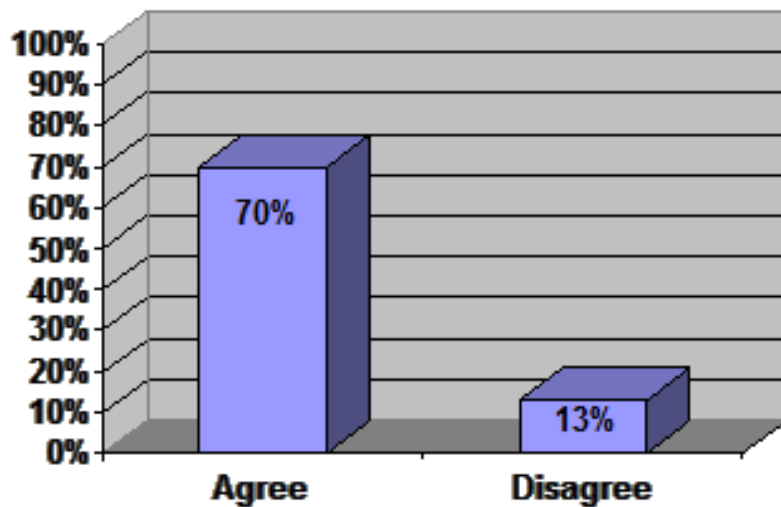


Property owners should be presumed innocent and government should have to prove owner's guilt

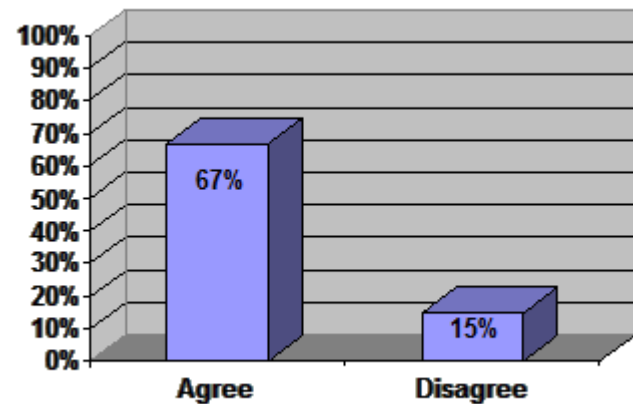


# Public Opinion

Law enforcement agencies should *not* be allowed to keep property they take for their own use. It should be placed in a state general fund or some other neutral account



State and local agencies should not be allowed to take property under federal law to make civil forfeiture easier and receive more in proceeds than under state law



# Other States' Reforms

- Criminal forfeiture
  - NM, NE
- Conviction before civil forfeiture
  - MD, MN, MT, NH, NV
- Raised standard of proof
  - MI, WY
- Seizure
  - FL
- Reporting
  - IN, MI, TN, UT, VA
- Attorneys' fees
  - OK

# Pending Legislation

- California
- New Jersey
- Ohio
- Federal government

# Electronic Recovery and Access to Data (ERAD)

- Handheld device using wireless connectivity.
- Allows law enforcement officer in field to:
  - Identify suspicious prepaid cards; and
  - Put a temporary hold on the linked funds
  - Until a full investigation can be completed.
- Developed by First Responder Group in U.S. Homeland Security's Science and Technology Directorate
  - March 2012.
  - Combat cartel's use of cards to transport drug proceeds



# Oklahoma Dep't. of Public Safety

- Contract with ERAD Group of Fort Worth.
- Obtained 16 prepaid card readers in May
- Costs:
  - One-time: \$5,000 for implementation;
  - One-time: \$1,500 for training; and
  - Ongoing: 7.7% of seized funds

# Other Jurisdictions

- “More than a couple hundred (agencies)”  
T. Jack Williams, ERAD Group President.
- Other agencies:
  - Navajo County (AZ) Sheriff's Office;
  - City of Tempe, (AZ);
  - City of Augusta (GA);
  - Bexar County Criminal District Attorney in San Antonio, TX.

# ERAD Proposal

## ◉ Define probable cause:

- Nebraska law enacted: Cash without any other indicia of crime does not suffice for probable cause for seizure.
- Proposal: Cards without another indicia of crime do not suffice for probable cause for seizure.

# Model Legislation

- Reporting:

<http://ij.org/activism/legislation/model-legislation/model-forfeiture-reporting-law/>

- Criminal forfeiture:

<http://ij.org/activism/legislation/model-legislation/model-criminal-forfeiture-law/>

- Handout

# Institute for Justice

- The Institute for Justice is a 501(c)(3) organization that advocates to limit the size and scope of government power and to ensure that all Americans have the right to control their own destinies as free and responsible members of society.
- Founded in 1991, IJ's headquarters are in Arlington, VA. It has 5 state offices in Florida, Minnesota, Texas, Arizona and Washington State and a clinic at the University of Chicago's law school.
- Financial reports at:  
<http://ij.org/about-us/financial-reports>