

**Annual Report of the
Asset Forfeiture Oversight Advisory Committee
Summarizing Forfeiture Activity
During Calendar Year 2003**



Presented to:

**Senate President Peter Courtney
Speaker of the House Karen Minnis
Governor Theodore R. Kulongoski
Attorney General Hardy Myers**

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This report and additional information
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Asset Forfeiture Oversight Advisory Committee Annual Report Summarizing Forfeiture Activity During CY2003

Executive Summary

The Asset Forfeiture Oversight Advisory Committee (AFOAC) was created to aid the legislature in determining the effect of the state's civil asset forfeiture law and the manner in which it is being applied. The Committee is charged with preparing reports that detail the number and nature of civil asset forfeitures carried out under ORS Chapter 475A, and recommend changes to increase the effectiveness, fairness, and efficiency of forfeiture actions. The Committee is made up of 12 members, three each appointed by the President of the Senate, Speaker of the House, Governor, and Attorney General. The Committee meets at the call of the chair.

The Committee's responsibilities were expanded by the 2001 Legislative Assembly to conform to a voter initiative establishing constitutional limitations on civil forfeiture – including increased oversight – and to establish similar oversight responsibilities for a new criminal forfeiture law, which became effective January 1, 2002. Committee members and staff were actively involved in both legislative efforts.

These major transitions limit the long-term usefulness of information collected by the Committee for this report. The Committee expected its revised reporting process, adopted in 1999, to produce more reliable data for oversight and analysis. But in November 2000, voters passed a constitutional amendment (Ballot Measure 3) that imposed new restrictions on civil forfeiture and led most police agencies to sharply reduce forfeiture activity.

A pending challenge to the validity of Measure 3, public safety budget cuts, and the expiration of civil and criminal forfeiture laws in 2005 create a volatile environment for forfeiture activity. Absent significant law changes, the Committee expects criminal forfeiture to replace most civil forfeitures and overall forfeiture activity to remain substantially below pre-Measure 3 levels.

Two-thirds of the seizures reported to the Committee in 2002 involved civil forfeiture cases resolved after the effective date of Measure 3, and therefore subject to its provisions, while nearly all of the civil forfeitures reported in 2003 were subject to the provisions of Measure 3.

After the passage of Measure 3, many jurisdictions decided not to pursue forfeiture cases under the restrictions of Measure 3 until new legislation clarified its requirements or court challenges to the measure were resolved. Reported seizures by police agencies dropped 75 percent between 2000 and 2001 (from 1,526 to 389). Other apparent effects of Measure 3 include an increase in cases where forfeiture was disputed by filing a claim, a larger proportion of seizures relying on search warrants or court orders rather than probable cause, reported seizures involving higher average values of cash or property, and a larger proportion of forfeiture cases where the claimant was represented by counsel.

Data provided by forfeiture counsel during calendar year 2003 indicate:

- ★ After two years of decline, reported forfeitures increased to 268 in 2003, up from 198 in 2002. Reported forfeitures had declined steeply from 1,526 in CY2000, attributed to the reaction of agencies to the procedural requirements of Measure 3 and its prohibition of the

use of proceeds for law enforcement, and state and local budget reductions. Part of this increase may have been due to some agencies filing reports on old cases. [see p. 8]

- ★ Most seizures reported in 2003 involved currency, continuing recent reductions in the proportion of cases involving weapons, real property, or other personal property. [see p. 11]
- ★ The proportion of forfeiture cases involving drug manufacture increased sharply in 2003. Most seizures continued to involve multiple types of drug law violations (possession, delivery, or manufacture). The most common violation continued to involve possession and delivery. [see p. 12]
- ★ Substantially more cases involved methamphetamine than any other drug, a departure from previous years where the number of cases involving marijuana was similar to the number of cases involving methamphetamine. [see p. 9]
- ★ The proportion of seizures that produced claims against the property seized continued at pre-Measure 3 levels (26 percent in 2003, versus 42 percent in 2001). [see p. 13]
- ★ The proportion of cases resulting from probable cause searches continued to decline (to 28 percent in 2002 and 2003, down from 36 percent in CY2001 and 59 percent during the previous two years). [see p. 14]
- ★ The proportion of cases declined by forfeiture counsel continued to decrease. Only three percent of cases were declined in 2003, compared to 9-22 percent in previous years. [see p. 15]
- ★ Claimants again were much more likely to be represented by legal counsel in civil forfeitures (in 41 percent of the cases, up from 28 to 29 percent in 2001 and 2002, and 14-18 percent in previous years). [see p. 15]
- ★ Somewhat more forfeiture actions resulted in a default judgment than during the previous two years (79 percent, up from 72 to 76 percent in 2001 and 2002), though still below the 85 to 90 percent in years before then. [see p. 16]
- ★ The average value of cash seized, \$3,154, was less than in 2001 (\$4,010), but still substantially higher than the previous year (\$1,850). This was due to fewer cases involving very small property values. However, there was also a reduction in cases involving very large property values (over \$100,000). [see p. 17]
- ★ The number of cases in which the final distribution of assets was reported in 2003 increased to 252 from 49 in 2002. This is likely due more to increased compliance than to an increase in forfeiture activity. Also reflecting compliance with Measure 3 and the new criminal forfeiture law, investigative costs deducted from proceeds prior to distribution dropped from 35 percent in 2002 to less than two percent. Publication costs and attorney fees consumed ten percent, and “other costs,” maintenance and storage, and victim restitution consumed 21 percent of the total. [see p. 18]
- ★ Fewer local governments submitted reports on how they spent forfeiture proceeds (14, down from 18 in 2002 and 28 in 2001). [see p. 20]

Historical Background

The 1989 Oregon legislature enacted a comprehensive civil forfeiture statute to capture revenue from narcotics transactions which otherwise escape taxation, and to allow the use of that revenue to improve government response to drug-related prohibited conduct. This law provides for forfeiture in a civil action of properties used in or related to drug crimes. 1989 Oregon Laws Chapter 791, codified as ORS Chapter 475A in 1997, further describes how seized assets will be handled. It establishes conditions for disbursement of funds received through forfeiture, and provides for the return of assets to claimants if those assets are not found to have been used for or derived from unlawful drug activity.

The Asset Forfeiture Oversight Advisory Committee (AFOAC) was created to aid the legislature in determining the effect of the law and the manner in which it was being applied. The Committee prepares “reports detailing the number and nature of forfeitures carried out” under this law. In order to gather information to be used in preparing these reports to the legislature, the Committee met regularly from October 1991 to April 1994. Report forms to be completed by forfeiture counsel were developed. These forms were used to gather information regarding seizure data and the distribution of forfeited assets as they related to specific cases. Completed forms were sent to the Legislative Counsel’s office where they were entered into a database, as time allowed. As a result of limited staffing, data were not entered after 1995.

In 1997, the legislature repealed the sunset provision of the forfeiture law, provided staff for the AFOAC and directed the AFOAC to review the reporting process. Funding for AFOAC staff was provided from state and local forfeiture proceeds. These funds allowed the creation of one 0.5 FTE position within the Criminal Justice Commission to serve as Committee staff.

New Legislation

Adoption of Ballot Measure 3 by Oregon voters in November 2000 necessitated major changes in the way civil asset forfeiture is applied in this state. Measure 3, now Article XV, Section 10, of the Oregon Constitution, prohibits the civil forfeiture of assets unless the owner is first convicted of the crime with which the assets are alleged to have been involved. Measure 3 also prohibits the use of forfeited assets for law enforcement purposes and extends the reporting requirement to all civil

forfeitures, not just those associated with narcotic law violations. The 2001 Legislative Assembly adopted revisions to ORS 475A to bring it into compliance with Measure 3.

Ballot Measure 3 made sweeping changes to civil forfeiture by requiring that the owner be convicted of a crime and prohibiting the use of proceeds for law enforcement. The 2001 Legislature created criminal forfeiture laws.

Criminal forfeiture has long been available as a sanction imposed as part of a sentence following conviction of certain crimes. The 2001 Legislative Assembly broadened the application of criminal forfeiture. 2001 Oregon Laws Chapter 666, makes forfeiture of the *proceeds* of a crime, or of a similar prior crime, available as a sanction for any felony or Class A misdemeanor. In addition, the *instrumentalities* of a list of specific crimes (including several Class A misdemeanors) may also be forfeited. The law, which “sunsets” on 31 July 2005 (along with the revisions to ORS Chapter 475A), established a reporting process very similar to that which applies to civil asset forfeiture, but specifies a different distribution of the forfeited assets, 40 percent of which may be used for law enforcement, 20% for state purposes (oversight, drug lab cleanup, and indigent defense), and 40 percent for drug treatment and education.

The 2001 Legislative Assembly also adopted Senate Bill 914, designed to improve and enhance system coordination efforts between the criminal justice and substance abuse treatment systems. This was, in part, a response to Measure 3 that required proceeds from civil asset forfeitures be expended on drug treatment, unless another use was specified "by law." SB 914 also required counties receiving proceeds from criminal asset forfeitures to adopt a plan for the use of those funds in cooperation with the state Office of Mental Health and Addiction Services (OMHAS). Some counties that did not anticipate receiving such proceeds did not participate, and so were not eligible to receive additional state asset forfeiture revenues administered by OMHAS. As of the date of this report, however, there have been no such proceeds from forfeitures to state agencies.

Prior to the 2003 Legislative Assembly and after considering several proposals, the Committee sponsored the introduction of one bill, SB 59, during the session. SB 59, as introduced, extended the period during which forfeiture counsel must file a criminal information or indictment for criminal forfeiture, allowing 30 days for forfeiture counsel to file the indictment or information after seizure for forfeiture. This makes the timeline consistent with other parts of the criminal forfeiture law, 2001 Oregon Laws, Chapter 666. With amendments by the House Judiciary Committee, it exempts "firearms and other deadly weapons" from criminal forfeiture, makes them available for law enforcement use, permits law enforcement agencies to sell them, and distributes any proceeds in accordance with the criminal forfeiture distribution scheme. There is no provision for reporting to the committee, but the Asset Forfeiture Oversight Account is to receive a portion of any proceeds from the sale of weapons.

Other legislation adopted in 2003 added new crimes to Section 19 of the criminal forfeiture law, allowing the instrumentalities of "unlawful credit card factoring (HB 3317, §4), and failure to obey cigarette tax requirements (HB 2094, §16). HB 2770 (§11) modifies the definition of "burglary tools" to include "theft devices" in the same section.

HB 2086 created the crime of cockfighting and several allied crimes such as promoting or participation in a cockfight. While not directly modifying either the civil forfeiture statute or the criminal forfeiture law, it did include provisions relating to forfeiture of the animals involved, as well as instrumentalities of the crimes, to local agencies. It does not specifically require either the reporting of forfeitures to the Committee or any distribution of proceeds.

Committee Activities

The Asset Forfeiture Oversight Advisory Committee is made up of 12 members, three each appointed by the President of the Senate, the Speaker of the House, the Governor, and the Attorney General. Senator Bev Clarno was elected chair of the Committee during 2002, with Representative Gary Hansen serving as vice-chair. Sen. Clarno resigned from her seat in the Senate in August, 2003, and her seat on the committee remained vacant at year's end.

Two new members joined the Committee in 2002, Representatives Dan Doyle and Bill Garrard were appointed to replace Representatives Kropf and Patridge. Senator Gordly resigned from the Committee in 2002 and a replacement had not been appointed at year's end. As of the writing of this report, Representatives Jeff Barker, Derrick Kitts, and Patti Smith had been appointed to the committee by the Speaker of the House. Sen. Minnis resigned his Senate seat as of the end of 2003, and the Senate President had appointed no new members. Members of the Committee at the end of 2003 are listed below.

AFOAC Committee Membership as of 31 December 2003	
Senate Appointments	House Appointments
Sen. John Minnis	Rep. Dan Doyle
vacant	Rep. Bill Garrard
vacant	Rep. Gary Hansen – Vice-Chair
Governor Appointments	Attorney General Appointments
Dave Fidanque, Oregon ACLU	Tim Colahan, Harney County District Attorney
Susie Penhollow, Deschutes County	Chris Brown, Douglas County Sheriff
Paul Loving, Attorney in private practice	Michelle Burrows, Defense Attorney

Professional affiliations of the Governor and Attorney General appointments are provided for identification purposes only. These members serve at the request of the appointing authority and do not represent any specific interest group.

Measure 3 extended the oversight role of the Committee to all civil forfeitures conducted under the authority of ORS Chapter 475A (excluding weapons and abused animals), while the new criminal forfeiture law also included an oversight role for the Committee analogous to that for civil forfeiture. Adapting the current reporting process to the revised civil forfeiture statute and the new criminal forfeiture law was one of the major activities of the Committee in 2001. Several members of the Committee actively participated in drafting the revisions to ORS 475A and the new criminal forfeiture law.

During the past year the Committee continued to compile information from forms submitted from forfeiture counsel and local jurisdictions as required by ORS Chapter 475A and the new criminal forfeiture law, 2001 Oregon Laws Chapter 666, and report the information gathered to the appointing authorities.

The Committee has been active in disseminating information about civil asset forfeiture in Oregon via the Internet on the Criminal Justice Commission website: <http://www.ocjc.state.or.us> and other media.

Committee members and staff provided assistance to the House and Senate Judiciary Committees in their consideration of the Committee's legislative proposal, SB 59 (see above).

Reporting Process

Beginning in 1998, the Committee began an extensive review of the reporting process, culminating in the adoption of an improved process that went into effect on March 1, 1999. That process applies to all cases with a judgment date on or after that date. Older forms and data were archived.

Reporting occurs in four stages. In the first step, as required by ORS 475A (Temporary §29 and 2001 Laws Chapt. 666, §18), forfeiture counsels submit Form 1 detailing seizure information for all forfeiture cases regardless of outcome. This form is completed after a final disposition or judgment is obtained in each case. Following the distribution of forfeited assets, counsel also submits Form 2 accounting for the costs of the proceeding and the distribution of proceeds. Before the adoption by voters of Measure 3, the Committee required Form 2 only for

cases with proceeds exceeding \$10,000. Pursuant to Measure 3, the Committee removed this limit when it amended the reporting forms for 2002.

Agencies remit payments to the Asset Forfeiture Oversight Account on a quarterly basis, using Form 4 to identify the cases from which the forfeiture proceeds arose and which had been reported previously on Forms 1 and 2. This form captures the contribution amount per case, as well as the cases where there were no net proceeds.

Each local government that has used or received funds from asset forfeiture is required to send an annual report (Form 3) describing how it spent forfeiture proceeds in its most recent fiscal year. Funds may derive from cases initiated in prior years and include interest from accounts carried forward from the previous fiscal year. No attempt is made to correlate these funds with individual cases.

Copies of the reporting forms and instructions are available from the Criminal Justice Commission website, <http://www.ocjc.state.or.us>, or by mail.

SEIZURE DATA

Information from the Seizure Data section of Form 1 is based on 235 seizures reported by forfeiture counsels to the Asset Forfeiture Oversight Advisory Committee between January 1 and December 31, 2003. Of these forfeitures, 123 were criminal forfeiture cases brought in response to the new criminal forfeiture law. Note that since the time from asset seizure to the final disposition of the case varies greatly, many of the cases reported were begun in previous years. The committee received an additional thirty-three reports from Deschutes and Yamhill counties for cases that had been completed in 1999 and 2000. While information from those reports is included in the Pre/Post Measure 3 illustration on page 10, data in those reports was not included in the following analysis unless otherwise indicated. And while staff has made every effort to ensure that the data is accurate and uniform, the information is only as complete as that provided by the reporting agencies. Due to the nature of forfeiture proceedings, in which multiple categories of drugs or property types are seized, the total of all categories will not equal the total number of cases.

Civil forfeiture is unlike a criminal proceeding: the property that has been seized is the defendant in a civil forfeiture proceeding. The property owner may appear as a claimant. As there are often multiple defendant properties in the forfeiture proceeding, it is also possible to have multiple claimants associated with a single seizure. It also is possible for different claims to be filed on different parts of the property that has been seized.

Form 1 requests forfeiture counsel to report all types of suspected controlled substances that may have been associated with an investigation that led to a seizure. In this report, related narcotics are grouped together, with totals for cocaine and crack cocaine as one category ("Cocaine"), and amphetamine (aka 'Speed'), methamphetamine, and its precursors as another category ("Meth"). Controlled substances reported in the "Other" category included psilocybin or *Psilocybe* mushrooms (three cases), Ecstasy (two cases), Hashish (two cases), and one instance each of various other drugs (Diazepam, Oxycodone, Hydrocodone, and Morphine).

For 221 cases involving a controlled substance, Table 1 shows the number of cases for each class of suspected controlled substance, the number of cases where that was the only controlled substance, as well as the cases in which some other drug was involved. For

instance, marijuana was reported in 72 cases, but was the only drug reported in 52 cases, indicating that it was found in combination with other controlled substances in 20 cases. In seven of those other cases, marijuana was found in combination with cocaine, and in 12 cases it was found in combination with methamphetamine. Adding all of the values for the drug alone and in combination with other drugs will total to more than the value for “all cases” since a single case may involve more than one other drug in combination. Note that while in previous years, there were similar numbers of cases involving marijuana and methamphetamine, in 2003 there were nearly twice as many cases involving methamphetamine as those involving marijuana.

Methamphetamine cases outnumbered marijuana cases by nearly two to one. In previous years, their numbers had been nearly equal.

Table 1. Controlled Substances Involved in Forfeiture Cases in CY2003

Controlled Substance:	All Cases	Alone	In Combination With:					
			Marijuana	Cocaine	Heroin	Meth	LSD	Other
Marijuana	72	52		7	0	12	2	8
Cocaine	38	21	7		7	6	2	4
Heroin	22	12	0	7		4	0	0
Meth	120	102	12	6	4		0	2
LSD	2	0	2	2	0	0		2
Other	12	3	8	4	0	2	2	

“All Cases” includes all of the forfeiture cases in which this substance was found, whether in combination with other substances or alone.

“Alone” includes only those cases in which only this substance was found.

“In Combination With” includes only those cases in which the drug in the left column appeared in combination with the drug indicated in the column heading.

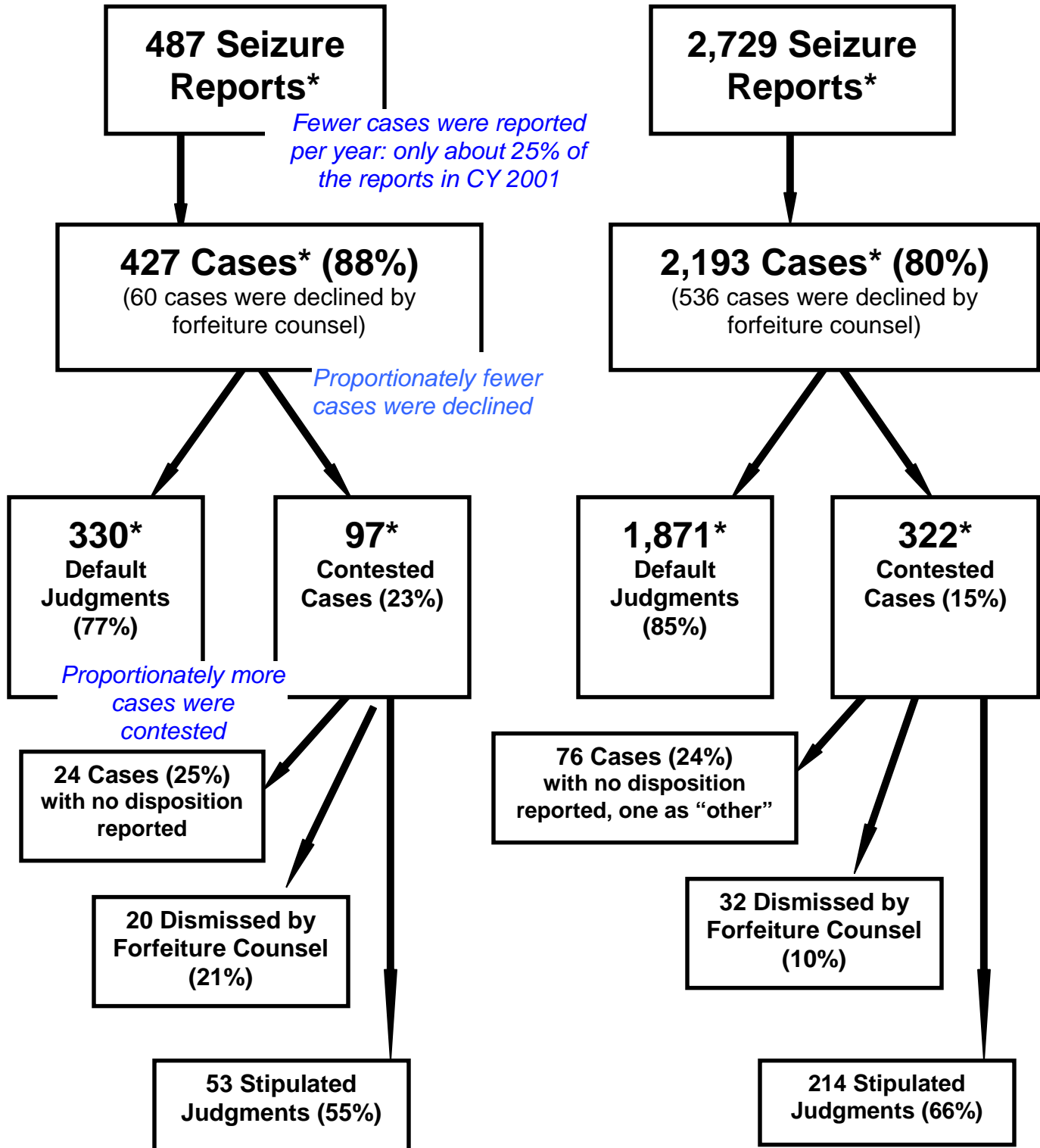
The diagram on the next page compares the number and disposition of seizures reported for all of the Pre- and Post-Measure 3 cases reported to the Committee since the new reporting procedure was adopted in 1999. The distinction is based on the reported judgment date: it is assumed that all cases with a judgment after the effective date of Measure 3 (7 December 2000) are “Post-Measure 3 cases.” Of 3,363 civil forfeiture cases reported to the Committee from 23 counties, 2,894 were for cases with disposition dates through 2000. In 2001, there were 247 cases reported from 15 counties, and for 2002 there were 142 cases reported from ten counties. In 2003 the number of cases had fallen to 80, with over half of those from Lane County, and the remaining cases from Deschutes, Jackson, Lincoln, Clackamas, and Malheur counties (in declining order).

The Disposition of Civil Forfeiture Reports

Comparing Pre- and Post-Measure 3 Cases

Post-Measure 3 (12/8/00 to current)

Pre-Measure 3 (through 12/7/00)



The seizure reporting form divides the type of property seized into five classifications: Conveyance, Currency, Real Property, Weapons, and Other personal property. Currency is defined as including any negotiable instrument of U.S. currency, including travelers' checks and money orders, balance in deposit, or other accounts and securities. Currency does not include coin collections or foreign currency, which are considered as "other personal property." Computer equipment was added to the form in 2001. Eighty-two percent of the seizures involved currency, while real property was involved in five percent of the seizures. Table 2 details the nature of the property associated with different categories of drugs seized.

Table 2. CY2003 Forfeiture Cases by Substance Involved and Property Seized

	All Cases	Currency	Convey- ance	Weapons	Real Property	Other Property	Computer Equipment
All Cases	235	193	36	37	11	23	2
Marijuana	72	65	10	11	8	7	1
Cocaine	27	31	12	4	0	1	0
Heroin	22	20	7	0	0	1	0
Meth	120	100	14	21	4	15	0
LSD	2	2	0	0	0	0	0

Eighty-two percent of the seizures included currency, 15 percent one or more conveyances, and five percent involved real property.

Nature of Prohibited Conduct

Before the passage of Measure 3, the Committee received reports on civil forfeitures relating to drug crimes only. While Measure 3 extended the Committee's oversight role to all kinds of civil asset forfeiture, most observers expected that controlled substance violations would continue to generate most cases. During 2003, only 14 forfeiture cases (six percent) were reported where the underlying prohibited conduct was other than violation of controlled substances law. Those included five violations of a Lincoln County ordinance relating to repeated convictions for driving under the influence of intoxicants. Three cases from other jurisdictions included felon in possession of weapons charges, one case of encouraging child sex abuse, and one case of aggravated animal abuse and animal fighting. Three other cases were likely controlled substance cases with incomplete data reported.

Table 3 lists the nature of the drug violation (Possession ("PCS"), Manufacture ("MCS"), or Delivery ("DCS")) establishing grounds for forfeiture and the controlled substances associated with those cases. The first line of the table ("All Cases") shows all cases in which that charge was listed, while the second line ("No other charge") shows cases in which the charge was the only charge in the case. The other lines indicate all cases with which the drug was associated or cases where only that one drug was found. "DCS wo/MCS" means cases in which delivery of

the controlled substance was charged, but not manufacture (since the two charges are often filed in combination).

Other associations of charges with offense may be derived from this table. For example, the delivery of marijuana was charged in a total of 65 cases, but in 32 of those cases, delivery was charged without an associated charge of manufacturing marijuana. Hence delivery *and* manufacture were charged in 33 cases (65 minus 32), and of the 37 cases in which manufacture was charged, 4 (37 minus 33) did not include the charge of delivery. Data regarding possession, delivery, and manufacture include the lesser-included offense of attempt.

Forfeiture cases in 2003 involving the delivery of methamphetamine exceeded the number of cases involving marijuana. (No cases of solicitation were reported in CY2003, and only three of conspiracy, one in conjunction with the charge of manufacture of marijuana and two involving delivery of cocaine and/or heroin.) Cases involving marijuana were generally fewer, while cases involving cocaine, heroin, and methamphetamine were more frequent than in 2002. Charges of illegal manufacture of heroin and cocaine were previously very uncommon.

Table 3. CY2003 Forfeiture Cases by Substance Involved and Charges Filed

	MCS		DCS		DCS wo/MCS		PCS	
All Cases	112		202		98		150	
No other charge	1		62		62		11	
	All Cases	Alone	All Cases	Alone	All Cases	Alone	All Cases	Alone
Marijuana	37	27	65	47	32	24	45	32
Cocaine	14	3	34	20	20	17	25	10
Heroin	12	5	20	11	9	7	16	6
Meth	69	56	110	92	43	38	90	75
LSD	2	0	2	0	0	0	2	0

PCS: Possession of a Controlled Substance; DCS: Delivery of a Controlled Substance; MCS: Manufacture of a Controlled Substance

Values for the various controlled substances represent all cases in which that substance was found alone or in combination with some other controlled substance ("All Cases") or in which only that one controlled substance was found ("Alone") for the charges involved.

Most forfeiture cases involve charges of drug possession and delivery. Forfeiture cases involving drug manufacture increased substantially in 2003.

Innocent Owner Claim Information

Data in this and the following sections is derived from all 235 reports and include the 14 cases that were not drug-related forfeitures.

**Claims were filed
in twenty-six
percent of
reported seizures,
returning to pre-
Measure 3 levels.**

Oregon civil forfeiture law allows persons with interest in seized property to file a claim stating that they are either an innocent owner (not involved in or having knowledge of the associated criminal activity) or that the property was not obtained through or is not profit of the associated criminal activity. Criminal forfeiture law allows similar claims from other than the person charged with the underlying crime. Claims were filed in 61 cases (26 percent), up slightly from 23 percent in 2002). These included three criminal forfeiture cases. Most of the other claims were filed in post-Measure 3 civil cases. While representing fewer cases, this appears to be a return to lower historical levels of claims filed: In CY 2001, immediately following the application of Measure 3, claims were filed in 42 percent of the cases, while in CY2000 claims were filed in 29 percent of the cases. In some cases multiple parties filed claims. The Committee does not collect data on the disposition of individual claims.

Table 5. Cases in which claims were filed against property seized for forfeiture.

Claimant	Number of cases
Person from whom property was seized	57
Other interested party	10
Financial Institution	3
Number of cases with claims (since some cases involve multiple claims, this does not equal the total number of claims)	61

Circumstances of Seizure

Property seizures were based solely on probable cause searches in 28 percent of the reported cases, continuing a decline from 59 percent in CY2000.

Table 6 lists the circumstances of the seizure. These circumstances include Search Warrant or Seizure Order, Probable Cause, Vehicle Consent Search, Other Consent Search, Public Health or Safety, Inventory, Search Incident to Arrest, Other, or any combination of these. The table indicates the total number of cases for each circumstance regardless of the suspected controlled substance. The number of cases totals to more than the total number of reports due to multiple grounds for seizures in many cases.

Table 6. Circumstances of the seizure

	No. of Cases
Search Warrant/Seizure Order	91
Probable Cause (includes 65 without warrant)	68
Vehicle Consent	42
Other Consent Search	59
Public Health/Safety	0
Inventory	3
Search incident to arrest (13 of which were also reported as Probable Cause searches)	32
Other (all of which included "Warrant" or "Probable Cause")	4

DISPOSITIONAL DATA

Forfeiture counsel declined to pursue civil forfeiture action in 6 of the 235 reported forfeiture cases. This represents three percent of the cases, down from nine to eleven percent the previous two years and 20 to 22 percent before that. Of the cases declined, there were five pre Measure 3 cases and one criminal forfeiture. Five of the declined cases were civil forfeitures from Deschutes County and the other was a criminal forfeiture from Multnomah County. Unlike earlier reports, the next section includes data on all civil forfeiture cases since a conviction would have been obtained in completed civil cases unless the property was forfeited as abandoned property or pursuant to a "voluntary forfeiture." Criminal forfeiture cases are not included since the defendant would have been represented anyway. Please note that numbers in this section may reflect actions pertaining to multiple claimants in a single forfeiture case.

Claimant Representation

Legal counsel assisted claimants in 44 of 107 civil forfeiture cases (41 percent, an increase from 29 and 28 percent in 2002 and 2001, respectively, and 14 to 18 percent in years before that). In four cases the claimant was assisted by legal counsel, however counsel was not formally retained to represent the claimant regarding the civil matter. This is typically a situation in which a defense attorney in an associated criminal action gives advice to the defendant whose property is being forfeited, but does not actually represent them in the civil proceeding. In four cases, an attorney represented the claimant in the forfeiture case who did not represent the claimant on the associated criminal case.

Legal representation of claimants continued to increase: from 14 percent before Measure 3 to 41 percent of the civil cases in 2003.

Table 7. Claimant Representation in Civil Forfeiture Cases

	Number of cases
At some time other than judgment	13
At time of judgment only	3
Both at time of judgment and time other than judgment	24
Represented separately (at time of judgment only)	3
Assisted only	4

Under ORS 475A.110 (4) claimants shall be awarded costs, disbursements and attorney's fees if claimant prevails. There was one reported case in which the court awarded attorney fees to claimant's counsel.

Default Judgment

Most civil forfeitures are not contested, and the property is forfeited as abandoned.

Default judgments were reported in 85 of 107 civil forfeiture cases (79 percent of the cases in which forfeiture was not declined, a slight increase from 72 and 76 percent in the previous two years, but still less than the 85 to 90 percent

in years before that). In 22 of those cases, however, a stipulated judgment indicated a mixed judgment of some kind. In 49 percent of the default cases, the judgment was issued on the

basis of no claim being filed, a decrease from 78 to 87 percent in previous years. In four cases, the property was forfeited as abandoned property, but the nature of the “abandonment” was not indicated. In 28 cases, there was a “voluntary” forfeiture. In seven cases the property was forfeited as abandoned property due to a defective claim.

Table 8. Default Judgments

Reason for Default	Number of cases
No claim filed	42
Judicial, no answer	0
Defective Claim	13
Other	0

Stay of Proceedings, Expedited Hearing Request

The claimant or the government may request a stay of the forfeiture proceeding until such time as any corresponding criminal case has been resolved. Although the total number of cases has been much reduced since the passage of Measure 3, a stay of proceedings was requested in 23 cases, an increase from 12 to 20 in years before 2001 (there were 32 in 2001 and 21 in 2002). Most of these stays (21) were requested by the government agency prosecuting the case, while the government agency and the claimant requested one jointly. A claimant requested the other one.

Claimants may file requests for an expedited hearing to order the return of seized property. There have been no cases reported in which an expedited hearing was requested since 1999.

Many contested civil forfeitures are resolved by stipulation. Only three went to trial in 2003.

Contested Hearings, Other Dispositions, Mitigation Hearings, and Appeals

There were only three civil forfeiture case reported with a trial or other proceeding that led to judgment, a decrease from 11 to 21 in previous years. One case was found for the government and two for the claimant. There were 20 civil forfeiture cases in which judgment was not reported as being the result of a default or a contested hearing (19 percent, somewhat less than the 28 and 23 percent in 2001 and 2002, respectively, but still more than the 11 to 15 percent in years before that). Of these cases, 14 were settled by stipulated judgment (70 percent). No disposition was reported in six cases.

Table 9. Disposition of Contested Cases*	Number of cases
Settled by stipulated judgment	14
Dismissed by forfeiture counsel	9
Summary release	2

* These cases do not include those in which a default judgment was also indicated.

No cases involved a mitigation hearing request (there were two in 2000). The claimant in two criminal forfeiture cases filed an appeal, the first appeals reported since one civil forfeiture case in 1999.

ACCOUNTING DATA

For the 229 cases that were not declined by forfeiture counsel (including criminal forfeitures), law enforcement agencies reported seizure of \$445,206 in cash during calendar year 2003 (down from \$570,867 in 2002 and \$1,117,276 in 2001), resulting in a forfeited amount of \$390,920 (88 percent of the amount seized, within the range of previous years, from 81 to 92 percent). Information regarding the actual value of property forfeited and the distribution of proceeds is not available until the property is liquidated by the law enforcement agency. That information is summarized in the Asset Distribution section below.

The total amount of currency seized continued to decline in 2003.

The average value of a forfeiture case increased, due to fewer cases involving very small and very large amounts of property.

Of the 229 cases that were not declined, 76 cases involved seizure of property that was not currency. Table 10 lists cases based on the estimated value of the non-currency property seized where that value was reported. There were no cases in the "Over \$100,000" range, continuing a downward trend from two the previous year and 12 the year before that. At the other end of the scale, 24 percent of seizures involved non-cash property values of \$5,000 or less, up slightly from 21 percent the previous year, but less than the 27 to 33 percent of the years before that. There were eleven cases involving seizure of real property. Two-thirds of these involved marijuana only, while all cases in previous years involved marijuana.

Table 10. Estimated value of property seized, excluding cash.	Number of cases
Less than \$1,000	34
\$1,000 - \$5,000	20
\$5,001 - \$10,000	5
\$10,001 - \$25,000	10
\$25,001 - \$100,000	7
Over \$100,000	0

Cash was seized in 188 cases, with a median value of \$1,286 and an average of \$2,356. With a higher average and lower median, it is apparent that there is a more even distribution of amounts seized, and fewer of the small amounts previously characteristic of forfeitures. There were 14 cases in which all or part of the seized non-cash assets was returned to a claimant prior to judgment.

The Committee does not gather data on the nature or value of the property returned.

ASSET DISTRIBUTION

The following information describes the manner in which forfeited assets are distributed pursuant to a judgment in a forfeiture case. Forfeiture counsels provide this information on Form 2 on a case-by-case basis as soon as reasonably possible following liquidation and distribution of all assets associated with the case. Before Measure 3, the reporting of this data was only required for cases where total receipts available for distribution were greater than or equal to \$10,000. However many agencies reported cases regardless of the value of total receipts, a practice which is now required in compliance with Measure 3.

Increased reporting compliance resulted in an apparent four-fold increase in the dollar amount of proceeds distributed. A smaller percentage of proceeds was deducted as costs in 2003.

During CY 2003, the Committee received 252 distribution reports (compared to a total of 268 seizure reports) that are included in this data. This represents a much higher proportion of cases for which Form 2 was received than during the previous year. It is important to remember that information regarding distribution of assets is not received until all property associated with the forfeiture action has been liquidated. This liquidation process may take up to a year from the date of final disposition. Therefore, many of the cases reported in this section are from previous years and do not correspond to cases reported in the previous sections of this report. While the amounts reported here are much higher than in CY2002, it is not clear how much of this is due to the delayed submission of reports that should have been received in 2002, and how much is actually due to increased forfeiture activity. It may be noted, however, that \$113,076 of the total proceeds was reported from civil forfeiture cases involving the seizure of cash only in which the judgment date was prior to 1 July 2002. This represents 32 percent of the total reported amount for civil forfeitures.

These numbers should only be viewed in comparison with the data from the same section of previous reports, where there is some assurance of internal consistency (except as noted above). These numbers should not be used for budgeting purposes or to compare against the fiscal year reports (Form 3) in the next section or the seizure reports (Form 1) in the previous section.

During CY2003, \$14,750 had been deposited into the Asset Forfeiture Oversight Account, which would indicate total funds available for distribution to have been at least \$590,000. Note that most of this amount would have been for cases reported on Form 2 the previous year. The Oversight Account supports the Committee staff and activities.

Asset Distribution Table

	Civil	Criminal
Actual cash forfeited at time of judgment	\$ 351,430	227,991
Interest earned on forfeited cash pending judgment	\$ 16,533	2,245
Liquidated proceeds of other property	\$ 141,636	4,683
Total Receipts available for distribution	\$ 671,212	234,918
COSTS OF CIVIL FORFEITURES:		
Publications:	\$ 10,287	
Attorney Fees:	\$ 70,494	
Litigation expenses:	\$ 0	
Investigative Costs:	\$ 12,375	
Other:	\$ 167,423	
COSTS OF CRIMINAL FORFEITURES		
Publications:	\$ 9,538	
Storage Fees:	\$ 3,232	
Maintenance expenses:	\$ 1,512	
Victim Restitution	\$ 18,700	
TOTAL DEDUCTIONS	\$ 244,966 *	32,982
Net Proceeds Available for distribution	\$ 426,900 **	202,536
State of Oregon General Fund	N/A	20,255
DEQ Illegal Drug Cleanup Fund Deposit	\$ 17,426	14,178
AFOAC Account Deposit	\$ 8,681	6,067
Net cash distributed to seizing agencies, governmental entities and departments, including prosecution	\$ 392,804	161,343
Total estimated value of property in use by seizing agency	\$ 4,000	0
Total estimated value of weapons and equipment destroyed	\$ 5,820	3,410
Total estimated value of equipment donated to education	\$ 0	0

* Most agencies recorded the actual amount of costs in the preceding categories, but listed the total amount here which was allowed under the 25% cap imposed by Measure 3. Thus, the amount here is not equal to the total of categorized costs.

** This amount includes cases where investigation and/or prosecution costs exceeded the value of forfeited property, for which net proceeds are recorded as \$0.

LOCAL GOVERNMENT USE OF PROCEEDS

In addition to the forms completed by forfeiture counsel on a case-by-case basis, ORS 475A (Temporary §29) requires any political subdivision of the state that receives forfeiture proceeds to submit a report detailing how the proceeds have been or will be used. These reports (Form 3) are completed for the fiscal year of the agency and are submitted to the Committee on or before December 15 of each year. The following information is based on reports received detailing activity for the fiscal year ending in 2003.

As of the completion date of this report, 14 jurisdictions had reported, including five cities, five counties and four interagency narcotics task forces. This potentially represents a continued decrease in compliance from 2001 when 30 agencies reported and 2000 when 38 jurisdictions filed reports. The extent to which this decreased reporting may be due to jurisdictions not receiving any forfeiture proceeds cannot be determined from information submitted to the AFOAC, but consistency in reporting on all forms suggests that this accounts for the majority of the decrease. The information in this section cannot be directly compared to information in the preceding Asset Distribution Section. This information is based on local government fiscal years rather than the calendar year. Nor can this information be compared to previous years, due to inconsistent and/or incomplete reporting by jurisdictions. Like the asset distribution section, it is of value in showing how proceeds were used by jurisdictions.

Fewer jurisdictions reported spending or receiving forfeiture proceeds in 2003, continuing a trend.

Jurisdictions reported less money spent on investigative costs and more spent on drug treatment, education, and prevention.

Although the annual report form was originally designed to gather information on local government use of funds deposited in their forfeiture fund accounts, practice has not always followed policy. Before the passage of Measure 3, law enforcement agencies received the bulk of forfeiture proceeds, and were responsible for most of the record keeping. It was therefore natural that they would complete Form 3 and submit it to the committee. But with the passage of Measure 3 and the criminal forfeiture law, law enforcement agencies were no longer the direct recipients of these proceeds, and that has created problems for accounting in cities and counties that were not previously responsible for tracking these funds. Therefore, it should not be surprising that there have been some inconsistencies in the way agencies reported the amounts requested by Form 3.

Some obvious errors in reporting were corrected before the data was entered. Some jurisdictions report actual expenditures for civil forfeitures, even though the amount is above the 25 percent "cap" imposed by Measure 3. The amount shown as "total costs," is the "capped" amount, however, so it is not equal to the sum of the cost categories.

Annual Report Table

	Civil	Criminal
Balance from previous fiscal year	\$ 204,978	23,129
Total post-judgment receipts which became available for distribution this fiscal year from drug asset forfeitures including interest (excluding federal forfeitures)	\$ 248,812	140,244
Amount of post-judgment receipts expended for costs pertaining to civil forfeiture action:		
Publications	\$ 5,532	
Attorney Fees	\$ 27,807	
Investigative Costs	\$ 0	
Other	\$ 10,869	
Amount of post-judgment receipts expended for costs pertaining to criminal forfeiture action:		
Publications	\$ 3,972	
Towing / Storage	\$ 338	
Service / Maintenance	\$ 229	
Victim Restitution	\$ 18,700	
Other	\$ 160	
Total Costs:	\$ 36,959	23,399
Net receipts available after costs	\$ 211,853	117,145
Amount deposited in DEQ Illegal Drug Cleanup Fund	\$ 9,640	8,177
Amount deposited in AFOAC Fund	\$ 4,778	2,004
Amount deposited in State General Fund	\$ -----	11,681
Current proceeds from drug asset forfeitures (excluding federal forfeitures) distributed under ORS 475A	\$ 197,435	93,782
Total amount of post-judgment forfeiture proceeds available for distribution (current proceeds plus previous balance).	\$ 402,413	116,912
Amount of proceeds expended during fiscal year and general purpose for which it was used: (These amounts should not have been taken as costs above)		
Law Enforcement	\$ 59,745	17,929
Prosecution	\$ 62,189	14,254
Forfeiture expenses paid/reimbursed	\$ 16,681	0
Removal of toxic substances	\$ 10,612	0
Drug Treatment, Education, Prevention	\$ 61,553	46,539
Other	\$ 0	0
Total Expenditures:	\$ 210,780	78,722
Amount of post judgment forfeiture proceeds retained	\$ 185,141	38,190