

**Annual Report of the  
Asset Forfeiture Oversight Advisory Committee  
Summarizing Forfeiture Activity  
During Calendar Year 2004**



**Presented to:**

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

**March 31, 2005**

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This report and additional information  
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from the Criminal Justice Commission website:  
<http://www.ocjc.state.or.us>

# Asset Forfeiture Oversight Advisory Committee Annual Report Summarizing Forfeiture Activity During CY2004

## Executive Summary

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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 legal challenge to the validity of Measure 3 pending a decision by the Oregon Supreme Court, public safety budget cuts, and the expiration of civil and criminal forfeiture laws in 2005 create a volatile environment for forfeiture activity. While criminal forfeiture replaced most civil forfeitures in recent years, only one seizure for forfeiture was reported after June, 2004.

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 all of the civil forfeitures reported in 2004 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. 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 2004 indicate:

- ★ Reported forfeitures 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. Although there was some increase in recent years, forfeiture activity has essentially ceased. [see p. 8]

- ★ Most seizures reported in 2004 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 and 2004. 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]
- ★ As in 2003, 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 fell even below pre-Measure 3 levels (11 percent in 2004, versus 42 percent in 2001). [see p. 13]
- ★ The proportion of cases resulting from probable cause searches, at 30 percent, was similar to the previous two years (down from 36 percent in CY2001 and 59 percent during the two years before that). [see p. 14]
- ★ The proportion of cases declined by forfeiture counsel continued to decrease. No cases were declined in 2004, while three percent of cases were declined in 2003, compared to 9-22 percent in previous years. [see p. 15]
- ★ Representation of claimants by legal counsel in civil forfeitures returned to pre-Measure 3 levels at 16 percent (compared to 28 to 41 percent in 2001 through 2003 and 14-18 percent in previous years). [see p. 15]
- ★ The proportion of default judgments in civil forfeitures also returned to pre-Measure 3 levels at 85 percent (compared to 72 to 79 percent in 2001 through 2003 and 85 to 90 percent in previous years). [see p. 16]
- ★ The average value of cash seized, \$2,942, continued a decline from 2001 (\$4,010), but was still substantially higher than the year before that (\$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 decreased to 173 from 252 in 2003 but was still above the 49 in 2002. This is likely the result of decreased forfeiture activity. Unlike the seizure reports, the distribution of assets from some pre-Measure 3 cases was reported in 2004, explaining most of the five percent of proceeds deducted for investigative expenses. Publication costs, attorney fees and other expenses, on the other hand, decreased substantially. [see p. 18]
- ★ Fewer local governments submitted reports on how they spent forfeiture proceeds, continuing a trend from previous years. The total amount of proceeds increased, however, principally from criminal forfeitures [see p. 20]

# Historical Background

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The 1989 Oregon legislature enacted a comprehensive civil forfeiture statute to capture revenue from controlled substance transactions which otherwise escape taxation, and to allow the use of that revenue to improve government response to drug-related prohibited conduct. That law provided for forfeiture in a civil action of properties used in or related to drug crimes. 1989 Oregon Laws Chapter 791, amended and 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.

## Recent 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 drug 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 percent 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. The committee does not receive reports on the use of any of these funds.

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 to 30 days the period during which forfeiture counsel must file a criminal information or indictment for criminal forfeiture after seizure for forfeiture. This made the timeline consistent with other parts of the criminal forfeiture law, 2001 Oregon Laws, Chapter 666. With amendments by the House Judiciary Committee, it exempted "firearms and other deadly weapons" from criminal forfeiture, made them available for law enforcement use, permitted law enforcement agencies to sell them and distribute 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.

2003 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

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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. Representatives Jeff Barker, Derrick Kitts, and Patti Smith were appointed to the committee by the Speaker of the House in 2003. Senators Ted Ferrioli and Floyd Prozanski were appointed by the Senate President in 2004. Members of the Committee at the end of 2004 are listed below. Senator Avel Gordly was appointed in 2005 to fill the remaining vacancy on the committee.

<b>AFOAC Committee Membership as of 31 December 2004</b>	
<b>Senate Appointments</b>	<b>House Appointments</b>
Sen. Ted Ferrioli	Rep. Jeff Barker
Sen. Floyd Prozanski	Rep. Derrick Kitts
vacant	Rep. Patti Smith
<b>Governor Appointments</b>	<b>Attorney General Appointments</b>
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 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, 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

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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. It is not possible 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

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Information from the Seizure Data section of Form 1 is based on 246 seizures reported by forfeiture counsels to the Asset Forfeiture Oversight Advisory Committee between January 1 and December 31, 2004. Of these forfeitures, 142 were criminal forfeiture cases brought in response to the new criminal forfeiture law. 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 (five cases), Hashish (one case), and one instance of Methadone.

For 232 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 86 cases, but was the only drug reported in 64 cases, indicating that it was found in combination with other controlled substances in 22 cases. In 16 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

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

were similar numbers of cases involving marijuana and methamphetamine, in 2003 and 2004 there have been nearly twice as many cases involving methamphetamine as those involving marijuana.

**Table 1.** Controlled Substances Involved in Forfeiture Cases in CY2004

Controlled Substance:	All Cases	Alone	In Combination With:					
			Marijuana	Cocaine	Heroin	Meth	LSD	Other
Marijuana	86	64		0	1	16	0	5
Cocaine	14	8	0		4	2	0	0
Heroin	25	17	1	4		3	0	0
Meth	132	109	16	2	3		0	2
LSD	0	0	0	0	0	0		0
Other	8	3	5	0	0	2	0	

“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.

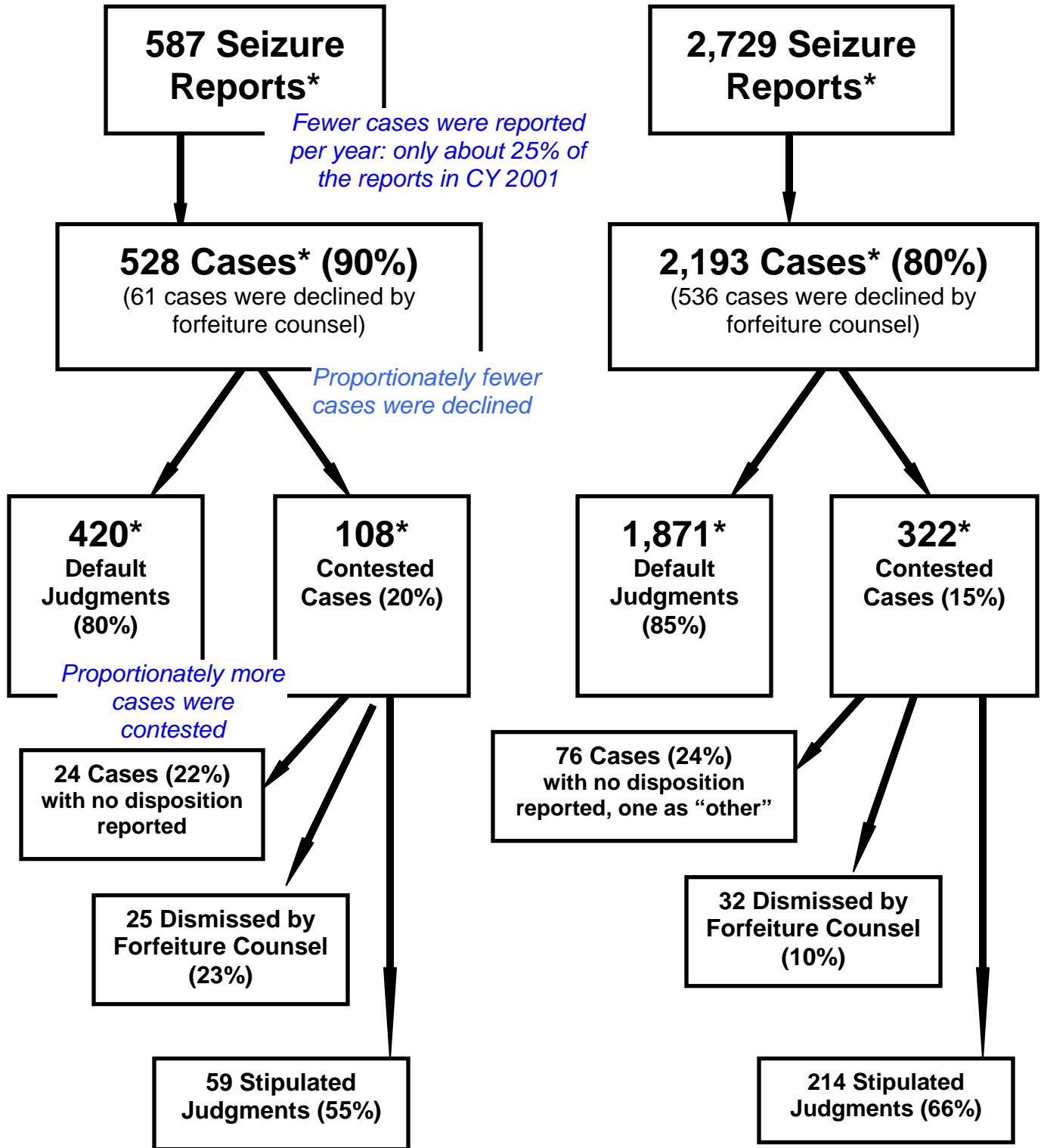
The diagram on the next page compares the number and disposition of seizures reported for all of the Pre- and Post-Measure 3 cases reported to the Committee since the new reporting procedure was adopted in 1999. The distinction is based on the reported judgment date: it is assumed that all cases with 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). All 103 civil cases reported in 2004 were post-Measure 3 cases, and all but five of those were from Lane County.

# 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 percent of the seizures involved currency, while real property was involved in one percent of the seizures. Table 2 details the nature of the property associated with different categories of drugs seized.

**Table 2. CY2004 Forfeiture Cases by Substance Involved and Property Seized**

	All Cases	Currency	Conveyance	Weapons	Real Property	Other Property	Computer Equipment
All Cases	246	198	27	43	3	5	2
Marijuana	86	76	15	10	3	3	0
Cocaine	14	13	2	1	0	0	0
Heroin	25	25	2	0	0	0	0
Meth	132	106	7	31	0	1	2
LSD	0	0	0	0	0	0	0

**Eighty percent of the seizures included currency, 11 percent one or more conveyances, and one 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 2004, only 12 forfeiture cases (five percent) were reported where the underlying prohibited conduct was other than violation of controlled substances law, though five of the 12 included drug law violations along with the other charges. Those included three violations of a Lincoln County ordinance relating to repeated convictions for driving under the influence of intoxicants (DUII). Six cases from other jurisdictions included DUII, five included identity theft, and two each of driving while suspended, forgery, and felon in possession of weapons charges.

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 80 cases, but in 47 of those cases, delivery was charged without an associated charge of manufacturing marijuana. Hence delivery *and* manufacture were charged in 33 cases (80 minus 47), and of the 34 cases in which manufacture was charged, only one (34 minus 33) did not include the charge of delivery. Data regarding possession, delivery, and manufacture include the lesser-included offense of attempt.

As in 2003, forfeiture cases in 2004 involving the delivery of methamphetamine exceeded the number of cases involving marijuana. (No cases of solicitation or conspiracy were reported in CY2004,.) The distributions of reported cases was otherwise very similar to that of 2003.

**Table 3. CY2004 Forfeiture Cases by Substance Involved and Charges Filed**

	MCS		DCS		DCS wo/MCS		PCS	
<b>All Cases</b>	116		210		98		175	
<b>No other charge</b>	0		51		51		15	
	All Cases	Alone	All Cases	Alone	All Cases	Alone	All Cases	Alone
<b>Marijuana</b>	34	27	80	63	47	37	62	44
<b>Cocaine</b>	5	2	13	7	7	5	8	3
<b>Heroin</b>	16	11	23	15	7	4	18	12
<b>Meth</b>	73	63	120	99	50	39	108	89
<b>LSD</b>	0	0	0	0	0	0	0	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 and 2004.**

## *Innocent Owner Claim Information*

Data in this and the following sections is derived from all 246 reports and include the 12 cases that were not drug-related forfeitures.

**Claims were filed in eleven percent of reported seizures, falling below 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 only 26 cases (11 percent), down from 23 and 26 percent in 2002 and 2003, respectively. These included three criminal forfeiture cases. 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.

<b>Claimant</b>	<b>Number of cases</b>
Person from whom property was seized	24
Other interested party	2
Financial Institution	0
Number of cases with claims (since some cases involve multiple claims, this does not equal the total number of claims)	26

## *Circumstances of Seizure*

**Property seizures were based solely on probable cause searches in 30 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

	<b>No. of Cases</b>
Search Warrant/Seizure Order	91
Probable Cause (all of which were without warrant)	75
Vehicle Consent	47
Other Consent Search	66
Public Health/Safety	0
Inventory	6
Search incident to arrest (9 of which were also reported as Probable Cause searches)	43
Other (this one case included "Warrant")	1

# DISPOSITIONAL DATA

Forfeiture counsel declined to pursue civil forfeiture action in no cases in 2004, down from three to eleven percent the previous three years and 20 to 22 percent before that. The next section includes data on civil forfeiture cases only 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 16 of 103 civil forfeiture cases (16 percent, down from 28 to 41 percent in 2001 through 2003; before the adoption of Measure 3, the rate was 14 to 18 percent). There were no cases in which the claimant was only assisted by legal counsel, and 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. There were no cases reported in which an attorney represented the claimant in the forfeiture case but did not represent the claimant on the associated criminal case.

**Legal representation of claimants fell to pre-Measure 3 levels.**

<b>Table 7. Claimant Representation in Civil Forfeiture Cases</b>	<b>Number of cases</b>
At some time other than judgment	16
At time of judgment only	0
Both at time of judgment and time other than judgment	10
Represented separately (at time of judgment only)	0
Assisted only	0

Under ORS 475A.110 (4) claimants shall be awarded costs, disbursements and attorney’s fees if claimant prevails. There were no cases reported in 2004 in which the court awarded attorney fees to claimant’s counsel.

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

## *Default Judgment*

Default judgments were reported in 88 of 103 civil forfeiture cases (85 percent of the cases, a slight increase from 72 to 79 percent in the previous three years, and similar to the 85 to 90 percent in years before that). In one of those cases, however, a stipulated judgment indicated a mixed judgment of some kind. In 89 percent of the default cases, the judgment was issued on the basis of no claim being filed, somewhat higher than rates of 78 to 87 percent in previous years. In 2003, only 49 percent of default judgments resulted from no claim being filed. In six cases, there was a “voluntary” forfeiture (all of which were the result of a stipulated judgment). In 10 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	78
Judicial, no answer	0
Defective Claim	11
Other	0

In 2003, only 49 percent of default judgments resulted from no claim being filed. In six cases, there was a “voluntary” forfeiture (all of which were the result of a stipulated judgment). In 10 cases the property was forfeited as abandoned property due to a defective claim.

## *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 18 cases, similar to the 12 to 20 in years before 2001, but less than the 21 to 32 in 2001 through 2003). All of the stays in 2004 were requested by the government agency prosecuting the case.

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 was only one civil forfeiture case reported with a trial or other proceeding that led to judgment, a decrease from 11 to 21 in previous years. The case was remanded to the trial court on appeal and the forfeiture judgment was sustained. Only three appeals of a forfeiture judgment have been reported in prior years, one civil and two criminal. There were 9 civil forfeiture cases in which judgment was not reported as being the result of a default or a contested hearing (9 percent, less than in any prior years). Of these cases, five were settled by stipulated judgment (56 percent). In four cases, forfeiture counsel dismissed the case.

<b>Table 9. Disposition of Contested Cases*</b>	<b>Number of cases</b>
Settled by stipulated judgment	10
Dismissed by forfeiture counsel	4
Summary release	0

\* 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, but none since).

## ACCOUNTING DATA

For the 246 cases that were not declined by forfeiture counsel (including criminal forfeitures), law enforcement agencies reported seizure of \$582,476 in cash during calendar year 2004 (up slightly from \$445,206 in 2003 and \$570,867 in 2002, but much below \$1,117,276 in 2001), resulting in a forfeited amount of \$530,066 (91 percent of the amount seized, within the 81 to 92 percent range of previous years). 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 and 2004.**

**The average value of a forfeiture case increased: there were fewer cases involving very small and very large amounts of property.**

Of the 246 cases that were not declined, 73 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 three cases in the "Over \$100,000" range, there have been zero to 12 in previous years. There were also more cases in the under \$1,000 value range, which were typically weapons forfeitures, but fewer in the middle ranges. There were no 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.

<b>Table 10. Estimated value of property seized, excluding cash.</b>	<b>Number of cases</b>
Less than \$1,000	44
\$1,000 - \$5,000	15
\$5,001 - \$10,000	4
\$10,001 - \$25,000	6
\$25,001 - \$100,000	1
Over \$100,000	3

Cash was seized in 198 cases, with a median value of \$893 and an average of \$2,942. 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.

Of the 142 criminal forfeiture cases, 116 involved proceeds, 99 instrumentalities, 64 the proceeds of "prior similar conduct," and there were 12 cases where the nature of the assets was not reported.

## 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.

**A substantially smaller percentage of proceeds was deducted as costs in 2004.**

During CY 2004, the Committee received 173 distribution reports (compared to a total of 246 seizure reports) that are included in this data. 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. Investigative costs of \$5 to \$55 were reported from nine post-Measure 3 cases in Lane County; the bulk of the investigative costs on the following page were from two pre-Measure 3 cases in Multnomah County.

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 CY2004, \$24,307 had been deposited into the Asset Forfeiture Oversight Account, which would indicate total funds available for distribution to have been at least \$972,280. 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	\$ 149,066	283,752
Interest earned on forfeited cash pending judgment	\$ 5,235	3,558
Liquidated proceeds of other property	\$ 216,979	55,750
Total Receipts available for distribution	\$ 371,280	329,468
<b>COSTS OF CIVIL FORFEITURES:</b>		
Publications:	\$ 1,613	
Attorney Fees:	\$ 30,226	
Litigation expenses:	\$ 0	
Investigative Costs:	\$ 18,856	
Other:	\$ 7,206	
<b>COSTS OF CRIMINAL FORFEITURES</b>		
Publications:	\$ 6,727	
Storage Fees:	\$ 642	
Maintenance expenses:	\$ 76,891	
Victim Restitution	\$ 1,051	
<b>TOTAL DEDUCTIONS</b>	<b>\$ 55,330 *</b>	<b>85,037</b>
Net Proceeds Available for distribution	\$ 315,951 **	304,975
State of Oregon General Fund	N/A	51,867
DEQ Illegal Drug Cleanup Fund Deposit	\$ 15,353	21,348
AFOAC Account Deposit	\$ 7,676	9,149
Net cash distributed to seizing agencies, governmental entities and departments, including prosecution	\$ 284,933	217,888
Total estimated value of property in use by seizing agency	\$ 0	0
Total estimated value of weapons and equipment destroyed	\$ 1,475	7,050
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 to be 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, 11 jurisdictions had reported, including four cities, three 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 2004, continuing a trend, though those that did reported more proceeds, principally from criminal forfeitures.**

**Jurisdictions reported less money spent from civil forfeiture proceeds despite greater receipts.**

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	\$ 481,142	11,943
Total post-judgment receipts which became available for distribution this fiscal year from drug asset forfeitures including interest (excluding federal forfeitures)	\$ 288,873	296,137
Amount of post-judgment receipts expended for costs pertaining to <i>civil</i> forfeiture action:		
Publications	\$ 1,009	
Attorney Fees	\$ 11,865	
Investigative Costs	\$ 0	
Other	\$ 11,724	
Amount of post-judgment receipts expended for costs pertaining to <i>criminal</i> forfeiture action:		
Publications	\$ 5,771	
Towing / Storage	\$ 639	
Service / Maintenance	\$ 6,452	
Victim Restitution	\$ 11,026	
Other	\$ 31	
Total Costs:	\$ 22,308	23,922
Net receipts available after costs	\$ 265,792	272,214
Amount deposited in DEQ Illegal Drug Cleanup Fund	\$ 13,096	19,977
Amount deposited in AFOAC Fund	\$ 6,548	8,133
Amount deposited in State General Fund	\$ -----	27,110
Current proceeds from drug asset forfeitures (excluding federal forfeitures) distributed under ORS 475A	\$ 248,907	218,520
Total amount of post-judgment forfeiture proceeds available for distribution (current proceeds plus previous balance).	\$ 721,388	226,970
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	\$ 24,967	42,688
Prosecution	\$ 0	14,254
Forfeiture expenses paid/reimbursed	\$ 0	0
Removal of toxic substances	\$ 0	0
Drug Treatment, Education, Prevention	\$ 27,837	108,439
Other	\$ 17,583	0
Total Expenditures:	\$ 70,371	175,308
Amount of post judgment forfeiture proceeds retained	\$ 657,676	54,646