

Asset Forfeiture (2020) Report

Report from the Asset Forfeiture Oversight
Advisory Committee

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Oregon Criminal Justice Commission

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Executive Director

The mission of the Oregon Criminal Justice Commission is to improve the legitimacy, efficiency, and effectiveness of state and local criminal justice systems.

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Executive Summary

This 2020 Asset Forfeiture Report differs in a few aspects from previous reports. Previously, seizures reported to CJC in the report calendar year were split into “all seizures reported in (calendar year)” and “all (calendar year) seizures reported in (calendar year)”. For this and future reports, all calendar year seizures reported to CJC before the writing of the report are included. So for this report, all 2020 seizures reported to CJC before its writing are included in the seizure tables below. This seizure information is supplemented by a dashboard on the CJC website, which includes the same information as the report but is updated monthly, so that information on any 2020 seizures reported to CJC after the publishing of this report can be accessed easily online. This will make the report clearer and make accessing real-time information possible. Using this method for previous years as well, this report provides a comparison of the nature and number of forfeitures made in Oregon in 2018, 2019, and 2020.

There were 113 seizures made statewide in 2020, down from 270 made in 2019. 89.4 percent of these were made by local agencies and 80.5 percent were filed as civil forfeitures. 98.2 percent of all seizures were drug related. The three most common circumstances of search and seizure reported were search warrant/seizure order, probable cause (no warrant), and incident to arrest. The three most common natures of prohibited conduct leading to search and seizure were delivery, manufacture, and possession. Further detail regarding 2020 seizures is available in Tables 1 and 3-4.

Statewide, the receipts made available for disposition in 2020 totaled \$1,535,261.52. After costs and distributions, the net proceeds for law enforcement totaled \$695,577.84. The majority of dispositions occurred under civil forfeitures from local agencies, the next largest number of dispositions under criminal forfeitures from local agencies, and the smallest number of dispositions under civil forfeitures from state agencies. There were no dispositions under criminal forfeitures from state agencies. See Table 5 for more information about dispositions.

Statewide, agencies reported a total of \$807,307.39 received as a result of asset forfeiture in 2020, \$795,379.36 spent, and an end of 2020 balance of \$2,961,252.64. A more detailed look at use of proceeds broken down by agency can be found in Table 7.

There was a notable decrease in the number of seizures in 2020 from previous years. There are two potential causes for this decrease. First, across the state, “normal” law enforcement operating practices were disrupted by a concern for the health and safety of officers and citizens during the COVID-19 pandemic, resulting in a drop in officer contact, and potentially fewer seizures. Second, there was an Oregon Supreme Court decision made in November 2019 (*State of Oregon vs. Mario Arreola-Botello*) which limited the permissible scope of traffic stops. This case likely led to a decrease in vehicle searches and a subsequent decrease in 2020 seizures.

Background

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 AFOAC prepares “reports detailing the number and nature of forfeitures carried out” under this law. 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 AFOAC staff. Statutory directions for the AFOAC, the CJC, and reporting requirements are found in ORS 131.600, ORS 131A.450, and ORS 131A.455.

During the 2018 legislative short session, HB 4056 was passed. This new legislation made the following changes to ORS Chapter 131A Civil Forfeiture:

- 1) Language change – HB 4056 strikes the term “drug courts” and adds “support for specialty courts” defined as drug, veteran, and mental health courts. This change broadens the use of forfeiture proceeds deposited in the Oregon Criminal Justice Commission drug courts account.
- 2) Addition of new distribution – the Oregon 529 College Savings Plan began receiving 10% of civil forfeiture proceeds as of July 1, 2018. The 10% is taken from proceeds after forfeiture costs, as with all other distributions, and is specifically distributed to the scholarship fund subaccount for children of public safety officers who have “suffered a qualifying death or disability,” i.e. a line of duty injury or fatality.

State and local government agencies electronically report seizures they have made for the purpose of civil and criminal forfeiture using the Oregon Asset Forfeiture (FluidReview) website. The staff at CJC uses the information reported by state and local agencies to compile this report for the AFOAC.

Constitutional Asset Forfeiture

The Eighth Amendment of the U.S. Constitution states that “[e]xcessive bail shall not be required, *nor excessive fines imposed*, nor cruel and unusual punishments inflicted” (emphasis added). In a recent decision, the Supreme Court of the United States (SCOTUS) applied this clause to the topic of state civil asset forfeiture. On February 9, 2019, SCOTUS reached a unanimous decision in *Timbs v. Indiana*. The main question asked and answered in *Timbs* is whether the Excessive Fines Clause of the Eighth Amendment applies to state forfeiture actions.

The case began when Mr. Timbs pled guilty to dealing in a controlled substance and conspiracy to commit theft. At the time of Mr. Timbs’ arrest, police seized his Land Rover SUV and the State brought a civil suit of forfeiture against the vehicle. Although the trial court found the SUV had been used to facilitate violation of a criminal statute, it denied the State’s requested forfeiture. The maximum monetary fine for Mr. Timbs’ conduct was \$10,000, and his SUV was worth \$42,000, making the seizure potentially grossly disproportionate to the gravity of the offense. The trial court determined this was a violation of the Eighth Amendment’s Excessive Fines Clause and therefore unconstitutional. While the Court of Appeals of Indiana affirmed the trial court’s ruling, the Indiana Supreme Court reversed the decision.

In overruling the lower courts, the Indiana Supreme Court did not determine whether the forfeiture was in fact disproportionate. Instead, the court held the Clause only constrains federal, not state, action. In order to determine whether a protection expressed in the U.S. Bill of Rights is applicable to the states, SCOTUS asks two questions: (1) “Is the right expressed fundamental to our scheme of ordered liberty?” and (2) “Is the right involved deeply rooted in this Nation’s history and tradition?” If the answer to either question is yes, the right is incorporated and enforced against the states through the Fourteenth Amendment to the U.S. Constitution. Relying upon the strong historical backdrop of the Clause, SCOTUS held that the Eighth Amendment’s Excessive Fines Clause is incorporated and applicable to state forfeiture actions.

Indiana did not meaningfully challenge this incorporation of the Excessive Fines Clause, but did argue the Clause does not apply to civil *in rem* forfeitures because that application is neither fundamental nor deeply rooted. This argument runs up against two problems. First, SCOTUS previously decided in *Austin v. United States* that civil *in rem* forfeitures fall within the Clause’s protection when those forfeitures are at least partially punitive. Second, when a protection from the U.S. Bill of Rights is incorporated, SCOTUS asks whether the right as a whole, not each possible application of the right, is fundamental or deeply rooted.

The State of Oregon protects against excessive fines in Article XV, Section 10(7) of the Constitution which states: “The value of property forfeited under the provisions of this section may not be excessive and shall be substantially proportional to the specific conduct for which the owner of the property has been convicted.” In light of the decision in *Timbs v. Indiana*, forfeitures in Oregon that are disproportionate or excessive run the risk of being declared unconstitutional under both the State of Oregon Constitution and the Eighth Amendment’s Excessive Fines Clause.

Methodology

In reports previous to 2018, a basic description of all seizures and dispositions reported to CJC during the calendar year of the report was provided. In the 2018 and 2019 reports, we attempted to better represent the process of asset forfeiture and its reporting through a more in-depth display and discussion of the data CJC received in the report year. This allowed for some explanation of seizure and disposition changes over time and paved the way for more detailed reports in future years. This year (and in future years), the Asset Forfeiture Report will be supplemented by a dashboard updated frequently by CJC. This will allow us to consolidate the Seizures section of this report to include only 2020 seizures reported to CJC before its writing. If seizures that occurred in 2020 but were not reported before this report was written are later submitted, they will appear on the dashboard.

In order to make sense of the following data tables (particularly in comparison to previous reports), it is important to note that the nature of seizure and disposition reporting is more time-dependent than one might expect. Specifically, a seizure occurs, and generally within 30 days a seizure for forfeiture form is submitted by the forfeiting agency, then at some point following that submission, the report of the seizure is made to CJC. There is no mandated time constraint on the report of seizure to the CJC, although it is generally expected that reports of seizures (for example) in 2019 should be made in 2019, or at the very latest in 2020. There are a number of cases reported to CJC in 2020 which occurred anywhere from 2005 to 2019. In reports previous to 2018, this has not been noted or addressed, so the number of seizures reported in the 2017 report, for instance, are “inflated” by this type of latent reporting. This issue, from the 2020 report forward, will be addressed by the supplemental dashboard regularly updated by CJC.

Similarly, reports of dispositions are made quite some time after the date of seizure. This is due mostly to the fact that multiple court processes must occur between the date of seizure and the final disposition of a single case. Typically, this process takes at least 6 months to complete, so it is not possible for CJC to track all seizures made in 2020 through their final disposition in time to report them here, as many dispositions have not yet been made and will not be made until later in 2021. Consequently, CJC also received large numbers of disposition reports in 2020 stemming from seizures which occurred in 2019. To address this problem, CJC chooses to include all disposition reports received in 2020 (regardless of seizure or disposition date) and treat them similarly to a simple income. This will ensure that all dispositions into “accounts” (distributions and agencies) will be recorded over time.

The remaining sections of this report contain detailed figures and tables describing asset forfeiture, distribution of assets to funds and agencies, and agency use of proceeds in 2020.

2020 Seizures

Table 1. 2020 Seizures reported to CJC

	Number	Percent
Total Number of Seizures	113	100.0%
Seizures by Local Agencies	101	89.4%
Seizures by State Agencies	12	10.6%
Civil Forfeitures	91	80.5%
Criminal Forfeitures	22	19.5%
Cases which are Drug Related	111	98.2%

Drug Type	Number of Cases*	Percent of (Drug Related) Cases†
Methamphetamine	65	58.6%
Heroin	42	37.8%
Marijuana/BHO	24	21.6%
Cocaine	15	13.5%
LSD	2	1.8%
MDMA	2	1.8%
Oxycodone	2	1.8%
Fentanyl	1	0.9%
Unknown	1	0.9%

Total Cash Seized‡	\$1,130,443.00
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*Many drug-related cases involve multiple drug types, so numbers will not add to total cases.

†Many drug-related cases involve multiple drug types, so percentages will not add to 100%.

‡The value of non-cash property seized is indeterminate.

Table 2. 2020 seizures reported to CJC by agency

Principal Seizing Agency	Number of Cases	Percent Civil Cases	Total Value Seized*	Number of Claims Filed	Percent of State Total by Total Value Seized
Bend Police Department	1	100.0%	\$1,486	0	0.1%
Canby Police Department	1	100.0%	\$1,808	0	0.2%
Central Oregon Drug Enforcement	26	92.3%	\$236,547	0	20.9%
Deschutes County Sheriff's Office	5	40.0%	\$14,540	0	1.3%
Jackson County Sheriff's Office	1	100.0%	\$940	0	0.1%
Josephine County Sheriff's Office	9	0.0%	\$46,313	0	4.1%
Medford Police Department	31	87.1%	\$75,554	3	6.7%
Oregon State Police	12	100.0%	\$660,115	4	58.4%
Portland Police Bureau	18	100.0%	\$47,090	5	4.2%
Rogue Area Drug Enforcement	5	0.0%	\$17,624	0	1.6%
Washington County Sheriff's Office	4	100.0%	\$28,426	0	2.5%

*This does not include the value of non-cash property with no reported liquid value.

Table 3. Circumstances of search and seizure for 2020 seizures reported to CJC

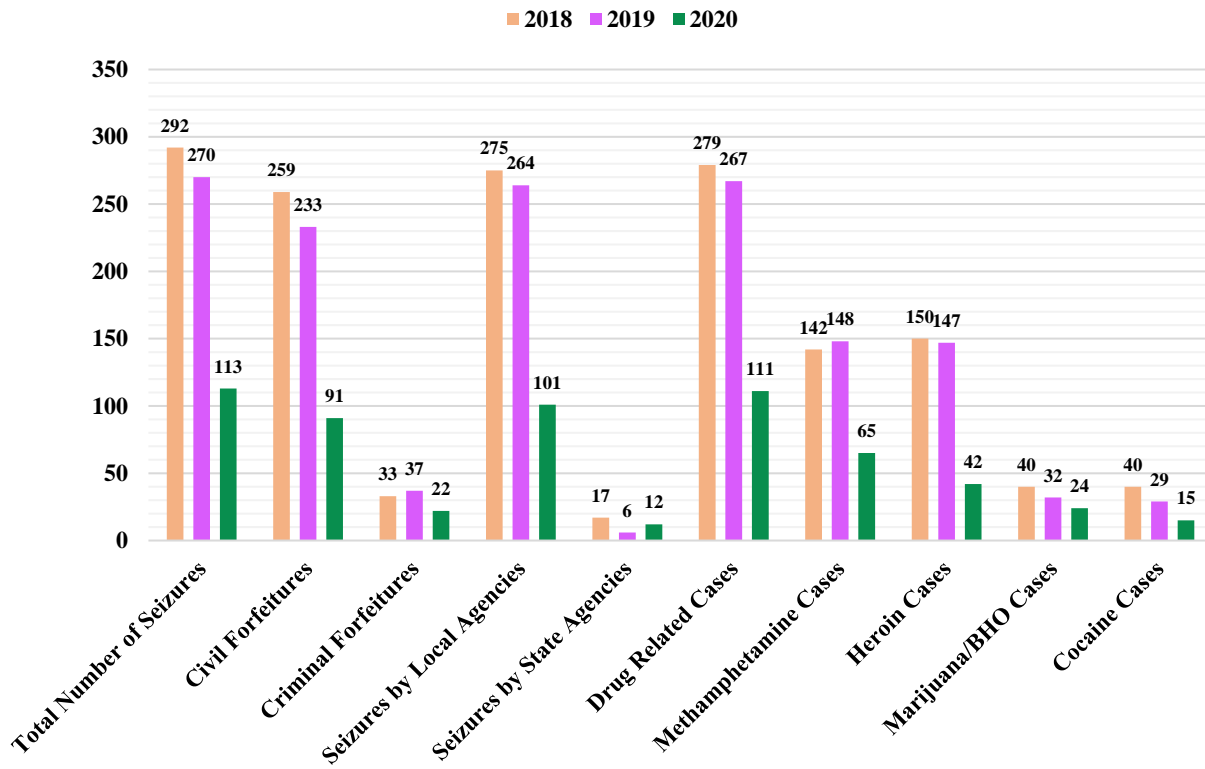
Circumstance	Number of Cases*	Percent of Cases†
Search warrant/seizure order	47	41.6%
Probable cause (no warrant)	39	34.5%
Incident to arrest	14	12.4%
Vehicle consent	8	7.1%
Other consent to search	7	6.2%
Inventory	1	0.9%

*Many cases involve multiple circumstances, so numbers will not add to total cases.
†Many cases involve multiple circumstances, so percentages will not add to 100%.

Table 4. Nature of prohibited conduct leading to seizure for 2020 seizures reported to CJC

Conduct	Number of Cases	Percent of Cases
Delivery	54	47.8%
Manufacture	32	28.3%
Possession	14	12.4%
Import/export	5	4.4%
Money laundering	4	3.5%
Controlled substances	1	0.9%
Felon in possession of a weapon	1	0.9%
Other	1	0.9%
None Reported	1	0.9%

Figure 1. 2018, 2019, and 2020 seizures



2020 Dispositions

Recall from the explanation above that dispositions typically occur months after their associated seizure. Therefore many of the dispositions in the following tables are the result of seizures occurring in 2019 or previously. Similarly, there are many seizures reported above for which dispositions have not yet occurred and cannot yet be reported. Dispositions for these seizures will be included in reports as they occur in future years.

The distributions seen in Table 5 reflect the following distribution requirements based on case type and agency type for any given disposition:

Figure 2. Distribution percentages for civil and criminal forfeitures by agency type

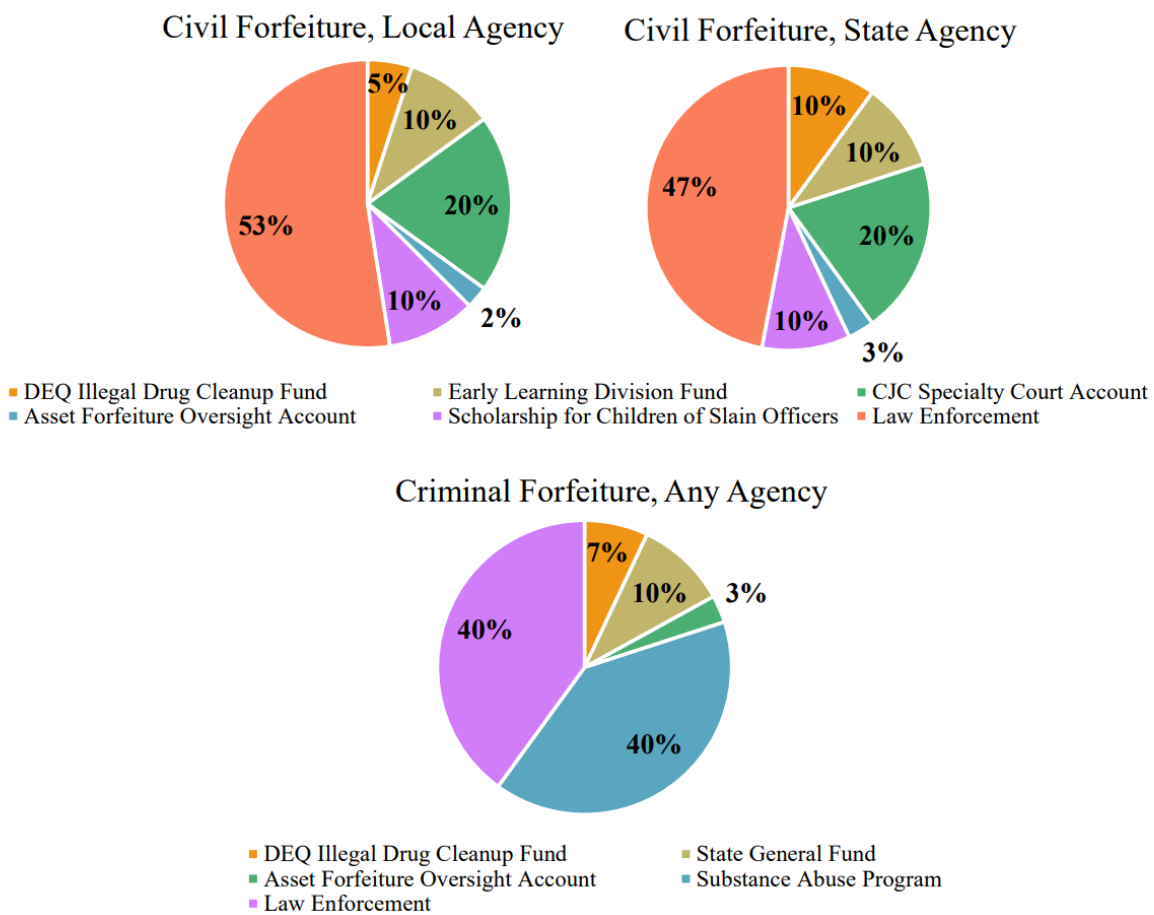


Table 5. All receipts, costs, and distributions for 2020 dispositions by case type and agency type

	Civil Forfeiture		Criminal Forfeiture		Total
	Local Agency	State Agency	Local Agency	State Agency	
Total Receipts	\$1,352,881	\$21,052	\$161,329	\$0	\$1,535,262
Total Costs	\$127,522	\$2,410	\$1,186	\$0	\$131,118
Publication	\$25,160	\$1,513	\$374	\$0	\$27,047
Attorney Fees	\$44,042	\$897	\$0	\$0	\$44,939
Towing/Storage	\$32,547	\$0	\$813	\$0	\$33,360
Maintenance of Property	\$1,360	\$0	\$0	\$0	\$1,360
Victim Restitution	\$0	\$0	\$0	\$0	\$0
Other	\$24,412	\$0	\$0	\$0	\$24,412
Net Receipts*	\$1,225,359	\$18,641	\$160,143	\$0	\$1,404,143
Total Distributions*	\$598,314	\$99,689	\$35,401	\$0	\$641,874
DEQ Illegal Drug Cleanup Fund	\$67,031	\$11,267	\$11,267	\$0	\$80,162
Asset Forfeiture Oversight Account	\$31,896	\$4,829	\$4,829	\$0	\$37,284
OCJC Account Supporting Specialty Courts	\$251,933	\$3,728	N/A	N/A	\$255,661
Early Learning Division Fund	\$125,966	\$1,864	N/A	N/A	\$127,830
State General Fund	N/A	N/A	\$16,096	\$0	\$16,096
Scholarship Program for Children of slain or injured Public Safety Officers	\$121,489	\$143	N/A	N/A	\$121,632
Substance Abuse Treatment	N/A	N/A	\$3,209	\$0	\$3,209
Net Law Enforcement Proceeds*	\$620,808	\$10,482	\$64,288	\$0	\$695,578

Note: All dollar values shown are rounded to the nearest dollar to account for rounding in distributions. N/A indicates that no percentage of net receipts in cases under the indicated forfeiture and agency types are distributed to the indicated fund (see Figure 2 for further information on distribution percentages).

*In theory, the sum of Total Distributions and Net Law Enforcement Proceeds should equal Net Receipts. In past reports, this has been the case. In this report, this is not the case due to changes made to the Disposition reporting process. Instead of automatic calculation of distributions by AFOAC's forms, each agency is now responsible for manually entering distribution amounts. This results in some small differences. If there are any questions regarding this matter, please contact CJC's Asset Forfeiture Liaison, Jeni Deuchars.

2020 Use of Proceeds

Table 6. Use of proceeds in 2020 by agency

Reporting Body	Received in 2020	Spent in 2020	End of 2020 Balance
Albany Police Department	\$0.00	\$1,389.56	\$4,540.24
City of Central Point	\$4,018.00	\$0.00	\$4,018.00
Clackamas County District Attorney's Office	\$0.00	\$0.00	\$11,102.00
Clackamas County Sheriff's Office	\$0.00	\$26,462.87	\$315,653.70
Clatsop County Sheriff's Office	\$0.00	\$0.00	\$0.00
Coburg Police Department	\$0.00	\$0.00	\$10,694.00
Deschutes County Sheriff's Office	\$118,741.90	\$126,701.60	\$273.05
Douglas Interagency Narcotics Team	\$43,027.37	\$43,027.37	\$0.00
Eugene PD	\$0.00	\$0.00	\$45,256.83
Grants Pass Department of Public Safety	\$2,554.42	\$0.00	\$2,566.44
Gresham Police Department	\$77,747.00	\$43,139.00	\$225,773.00
Harney County District Attorney's Office	\$0.00	\$729.60	\$24,781.25
Jackson County District Attorney	\$12,976.83	\$37,482.73	\$22,121.74
Lane County District Attorney's Office	\$1,501.45	\$1,501.45	\$0.00
Lane County Sheriff's Office	\$0.00	\$0.00	\$91,838.28
Lane County Sheriff's Office - INET	\$0.00	\$233.70	\$82,789.94
Marion County DA	\$0.00	\$0.00	\$3,803.00
Medford Police Department	\$266,688.30	\$143,867.10	\$388,897.70
Multnomah County District Attorney's Office	\$5,592.00	\$0.00	\$5,592.00
Oregon State Police	\$71,938.12	\$1,915.82	\$512,836.30
Polk Interagency Narcotics Team	\$0.00	\$0.00	\$0.00
Portland Police Bureau	\$29,435.30	\$55,659.38	\$495,491.10
Redmond Police Department	\$0.00	\$31,442.04	\$119,143.40
Rogue Area Drug Enforcement (RADE)	\$3,884.95	\$8,597.93	\$91,981.88
Salem	\$5,457.57	\$34,306.97	\$66,092.07
Sherman County Sheriff's Office	\$0.00	\$0.00	\$0.00
South Coast Interagency Narcotics Team	\$76,091.25	\$68,983.03	\$1,891.53
Springfield Police Department	\$1,505.45	\$8,499.59	\$133,178.00
Talent Police Department	\$1,909.93	\$4,800.00	\$2,437.61
Washington County Sheriff's Office	\$84,237.56	\$149,875.80	\$264,749.40
Yamhill County Interagency Narcotics Team	\$0.00	\$10,595.47	\$28,427.14
Yamhill County Sheriff's Office	\$0.00	\$0.00	\$5,323.05
State Total*	\$807,307.39	\$795,379.36	\$2,961,252.64

* Includes only those bodies that reported for the 2020 calendar year.

Table 7. Items purchased using proceeds in 2019 by agency

Agency*	Reported Items Purchased
Albany Police Department	Nikon DSLR Camera \$1,249.96 Nikon Battery, \$139.60.
Clackamas County Sheriff's Office	BlockLocker Faraday system/box/shipping, phone Faraday bags, tablet Faraday bags, bumpers/bump set/mount/paint, hitches; Replenish investigative fund.
Deschutes County Sheriff's Office	Building Lease, Vehicle Leases.
Douglas Interagency Narcotics Team	PAYROLL FOR ASSISTANT DISTRICT ATTORNEY FY 2020.
Gresham Police Department	Camera and associated equipment; Buy Money; Drug Detection K-9 Tracking Software Currency Counter Maintenance Cloud Service for Surveillance Cameras Covert Tracking Devices.
Harney County District Attorney's Office	-- newspaper notice, TGRF LLC media (\$660.00) -- indirect cost (fee) assessed by the County for administration of the fund (\$69.60).
Jackson County District Attorney	Minor Equipment for prosecution use; Operating/Training Expenses for prosecution; Minor Equipment for prosecution use; Operating Expenses for prosecution.
Lane County District Attorney's Office	All Forfeiture proceeds received are used to help fund our ongoing operating expenses, such as personnel costs and various supplies & services needed.
Lane County Sheriff's Office - INET	Personnel time for processing paperwork; District Attorney.
Medford Police Department	Clothing Duty Holster (2) Vehicles & Upfitting LightLab Cannabis Analyzer; Money Counter Service Skid Steer Brush Cutter Rental Vehicle Maintenance Seizing Agency Share; Video Surveillance System
Oregon State Police	Confidential funds returned; Attorney General Fees; Correction.
Portland Police Bureau	Narcotics - 2 new PC's, Narcotics - New Truck.
Redmond Police Department	SCU Tracker Upgrade Radios LPR Software/licenses, Port Switches Thermal Dual Shield Detective Mountable Cameras Arlo Camera Protective Box, Charger & Batteries, Ethernet Cables; SCU Buy Money for Drug Operations; Drone Operation Training & Test Study.
Rogue Area Drug Enforcement (RADE)	Search Warrant & Investigation Operations.
Salem	Computer hardware and software for forensics lab; vehicle replacement; Weapon Rack.
South Coast Interagency Narcotics Team	Taskforce operating expenses.
Springfield Police Department	Drug prevention & awareness promotional items.
Talent Police Department	6/17/2020 purchased 6 rifles for patrol use.
Washington County Sheriff's Office	Notices, distributions, Maintenance and operational cost for Air Support Unit, Investigative Overtime for WIN team not covered by HIDTA grant; Legal fees and services.
Yamhill County Interagency Narcotics Team	Vehicle Emergency Lights, battery; GPS Tracker Subscription Audit Charges Forfeiture Distributions to DEQ, AFOAC, CJC, ODE; Forfeiture Counsel.

*This table contains only agencies that reported proceeds spent in 2020.