

GUIDELINES ON FORFEITURES OF PROPERTY

[Adopted at the ICAA annual meeting November 3, 1989.]

[Amended November 10, 2008]

Guideline 1

The decision to initiate forfeiture of property pursuant to Iowa Code Chapter 809A is within the discretion of the prosecutor. The prosecutor determines whether forfeiture actions should be pursued, what property should be forfeited, and which interests of joint property owners should be excepted from the forfeiture action. The decision to forfeit property is made only after consideration of all the facts and circumstances available in light of the objectives to be achieved by forfeiture.

Guideline 2

The prosecutor should consider all of the objectives to be achieved by any forfeiture action. Among the objectives to be considered are the following:

1. Divesting criminal enterprises of their profits;
2. Separating criminal perpetrators from the instrumentalities of their crimes;
3. Ensuring the safety of the community from future criminal activities;
4. Deterring future criminal activity;
5. Imposing consequences that are proportionate to the seriousness of the criminal activities.

Guideline 3

The prosecutor should utilize his or her discretion in screening cases in which forfeiture is not justified. Among the factors to be considered in this decision are:

1. The seriousness of the criminal activity that supports the forfeiture;
2. The intent or mental state of the perpetrator of the criminal offense or series of offenses;
3. The nexus between the forfeitable instrumentality and the criminal offense or series of offenses;
4. The course of conduct of the perpetrator during the commission of the criminal offense or series of offenses;
5. The prior involvement, if any, of the perpetrator with the criminal justice system;
6. The effect, if any, that forfeiture would have in deterring future criminal activity by the perpetrator or by others in the community;
7. The effect, if any, that forfeiture would have in punishing the perpetrator;
8. The hardship, if any, that forfeiture would impose upon the perpetrator, family members, or joint property interest holders;
9. Balancing the cost of the forfeiture action to the county;
10. Protecting the rights of innocent property interest holders, if any.