

Georgia State University Law Review

Volume 8

Issue 1 *January 1992*

Article 10

1-1-1992

CRIMES AND OFFENSES Controlled Substances: Provide Procedures for the Seizure and Disposition of Forfeited Property; Provide for Liens on Property Subject to Forfeiture; Provide for Distribution of Forfeited Property and the Proceeds from Such Property

Debra D. Green

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

Debra D. Green, *CRIMES AND OFFENSES Controlled Substances: Provide Procedures for the Seizure and Disposition of Forfeited Property; Provide for Liens on Property Subject to Forfeiture; Provide for Distribution of Forfeited Property and the Proceeds from Such Property*, 8 GA. ST. U. L. REV. (1992).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol8/iss1/10>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

CRIMES AND OFFENSES

Controlled Substances: Provide Procedures for the Seizure and Disposition of Forfeited Property; Provide for Liens on Property Subject to Forfeiture; Provide for Distribution of Forfeited Property and the Proceeds from Such Property

CODE SECTION: O.C.G.A. § 16-13-49 (amended)
BILL NUMBER: HB 72
ACT NUMBER: 391
SUMMARY: The Act declares that certain items are contraband, and that no property rights exist as to those items. The Act provides for the seizure of property subject to forfeiture and for the filing of a lien for forfeiture upon the initiation of any civil or criminal proceeding under this article, as well as upon seizure. The Act provides procedures for forfeiture and the conditions required for the filing of a temporary restraining order against property subject to forfeiture. The Act provides for the evidence to be admissible at hearings and determinations made subject to forfeiture, as well as for inferences and rebuttable presumptions. The Act provides that forfeited property vests in the State at the time of conduct giving rise to the forfeiture. The Act provides for the disposition, sale, or destruction of property forfeited, and provides for the distribution and use of property and proceeds of forfeited property.

EFFECTIVE DATE: July 1, 1991

History

Drugs continue to be a major concern in our society.¹ In order to combat the proliferation of drugs, more training is required for law enforcement

1. *Law Makers '91: Legislative Day 13, State of the Judiciary Address*, (WGTV television broadcast, Feb. 4, 1991) (videotape on file in Georgia State University College of Law Library). The average number of cases per Georgia Superior Court judge increased by 152. Felony cases increased 18.5% due to "drug business." Drug appeals increased 77% during the period between 1976 and 1989. *Id.*

personnel.² Additionally, there is a need for adequate funding to provide indigent defendants with assistance of counsel.³

Prior to the 1991 legislative session, Georgia's law relating to forfeiture did not include real property.⁴ Additionally, the law stated that any forfeited property, after payment of all costs, vested in the local political subdivision whose law enforcement officers seized it.⁵ There was no provision made for the filing of a lien against property that was subject to forfeiture.⁶

HB 72

The Act substantially revised the Georgia Controlled Substances Act relating to forfeitures by substituting a new section in place of the previous section. As introduced, HB 72 did not set forth any definitions.⁷ However, the House Public Safety Committee Substitute provided for a section of definitions.⁸ The Senate Judiciary Committee Substitute expanded the definitions contained in section 16-13-49(a).⁹ Perhaps the most significant of all the definitions provided is given to the term "property."¹⁰ This definition significantly increased the reach of the State in forfeiture proceedings.¹¹

The Act establishes that forfeiture proceedings shall be filed in the name of the State of Georgia in the superior court by the district attorney

2. *Id.*

3. *Id.* The constitutional commandment that defendants be provided with adequate assistance of counsel is not the only reason to do so. Additionally, when adequate counsel is provided, cases flow through the courts more smoothly, the results are fairer, and the need for retrials and appeals is reduced. *Id.*

4. 1988 Ga. Laws 958 (formerly found at O.C.G.A. § 16-13-49(a) (1988)).

5. 1988 Ga. Laws 958 (formerly found at O.C.G.A. § 16-13-49(f)(2) (1988)). Proceeds from the sale of forfeited property could be expended for law enforcement purposes. However, the governing authority was able to limit the amount of these funds expended for law enforcement purposes to \$20,000 per year, expending the remainder of any funds for other public purposes. *Id.* The State did not share in the distribution. *Id.*

6. 1988 Ga. Laws 958 (formerly found at O.C.G.A. § 16-13-49 (1988)).

7. HB 72, as introduced, 1991 Ga. Gen. Assem.

8. HB 72 (HCS), 1991 Ga. Gen. Assem.

9. O.C.G.A. § 16-13-49(a) (Supp. 1991). Terms for which definitions are provided are: controlled substance, costs, court costs, enterprise, governmental agency, interest holder, owner, proceeds, property, and United States. *Id.*

10. O.C.G.A. § 16-13-49(a)(10) (Supp. 1991) defines property as: "anything of value and includes any interest in anything of value, including real property and any fixtures thereon, and tangible and intangible personal property, including but not limited to currency, instruments, securities, or any other kind of privilege, interest, claim, or right." *Id.*

11. Previously, forfeiture had not extended to real property. *See* O.C.G.A. § 16-13-49 (1988).

having jurisdiction over the forfeiture proceeding.¹² When more than one district attorney has jurisdiction over a forfeiture proceeding, the district attorney in the jurisdiction in which the offense occurred has priority.¹³ Subsection 16-13-49(c) provides for the revenue of forfeiture proceedings.¹⁴

Property declared contraband and subject to forfeiture includes all controlled substances,¹⁵ all property used or intended for use to facilitate a violation of the Georgia Controlled Substances Act,¹⁶ all property within the State used or intended for use to facilitate a felony violation of any controlled substances law,¹⁷ all weapons used or available for use in connection with the felony violation of any law dealing with controlled substances,¹⁸ any property interest or contractual right affording a source of influence over any enterprise,¹⁹ and all negotiable instruments found in close proximity to any controlled substance or marijuana or other property subject to forfeiture.²⁰ As introduced, HB 72 provided some protection to co-owners of property by providing an exemption from forfeiture if the co-owner could establish that she neither knew nor should have known, after reasonable inquiry, that the property was being used in the commission of a felony violation of the article.²¹ The House Public Safety Committee eliminated this language completely, and, in fact, called for the direct opposite result in regard to automobiles.²² The final result was that any conveyance for transportation will not be exempted from forfeiture unless the interest holder can demonstrate that the conveyance was not held jointly with a person whose conduct gave rise to its forfeiture.²³

HB 72, as introduced, also provided that no property interest would be forfeited if the owner could establish that she did not know, nor should have known, that the property was being used in a felony violation of the Controlled Substances Act.²⁴ A lienholder's interest could be protected if the lienholder could establish that there was no knowledge of the use or intended use of the property in the commission of a felony violation

12. O.C.G.A. § 16-13-49(b) (Supp. 1991). For actions in rem, the action must be brought where the property is located. O.C.G.A. § 16-13-49(b)(1)(A). For actions in personam, the proceeding will be brought in the county where the defendant resides. O.C.G.A. § 16-13-49(b)(1)(B). Additionally, the district attorney having jurisdiction over any offense that gave rise to the forfeiture proceeding has jurisdiction to file a forfeiture action. O.C.G.A. § 16-13-49(b)(1)(C) (Supp. 1991).

13. O.C.G.A. § 16-13-49(b)(2) (Supp. 1991).

14. O.C.G.A. § 16-13-49(c) (Supp. 1991).

15. O.C.G.A. § 16-13-49(d)(1) (Supp. 1991).

16. O.C.G.A. § 16-13-49(d)(2) (Supp. 1991).

17. O.C.G.A. § 16-13-49(d)(3) (Supp. 1991).

18. O.C.G.A. § 16-13-49(d)(4) (Supp. 1991).

19. O.C.G.A. § 16-13-49(d)(5) (Supp. 1991).

20. O.C.G.A. § 16-13-49(d)(6) (Supp. 1991).

21. HB 72, as introduced, 1991 Ga. Gen. Assem.

22. HB 72 (HCS), 1991 Ga. Gen. Assem.

23. O.C.G.A. § 16-13-49(e)(3) (Supp. 1991).

24. HB 72, as introduced, 1991 Ga. Gen. Assem.

of the article, that the prohibited use was without consent, and that the lien had been perfected prior to the seizure.²⁵ The House Public Safety Committee changed the language, setting a higher standard to avoid forfeiture.²⁶ To avoid forfeiture, the owner or interest holder must establish that he was not legally accountable for the conduct giving rise to the forfeiture, had not consented to the conduct, had no knowledge that it was likely to occur, and did not stand to gain from the prohibited conduct.²⁷ No property is subject to forfeiture unless the violation involves more than one gram of cocaine, more than four ounces of marijuana, or the property was used to facilitate a transaction in a controlled substance or marijuana.²⁸ An exemption was also provided for rented or leased vehicles by the House Public Safety Committee.²⁹ The company which owns leased or rented vehicles is to be contacted immediately by law enforcement officers.³⁰

Any law enforcement officer who has power to make arrests or to execute process or a search warrant has the power to seize property.³¹ A warrant for the seizure of property shall be issued on an affidavit demonstrating probable cause for the seizure, or when the property has been the subject of a previous judgment.³² Additionally, property may be seized without process if there is probable cause to believe it is subject to forfeiture or seized in conjunction with a search or arrest warrant.³³

For the first time, HB 72, as introduced, established specific time frames for the filing of a forfeiture proceeding following seizure.³⁴ The House Public Safety Committee reduced the time period permitted.³⁵ The Act requires the seizing officer to notify the district attorney in writing within twenty days of the seizure.³⁶ A complaint for forfeiture must be initiated within sixty days.³⁷ Failure by the State to comply with the time frames stated may result in the release of seized property.³⁸

25. *Id.*

26. HB 72 (HCS), 1991 Ga. Gen. Assem.

27. O.C.G.A. § 16-13-49(e)(1)-(2) (Supp. 1991).

28. O.C.G.A. § 16-13-49(e) (Supp. 1991).

29. HB 72 (HCS), 1991 Ga. Gen. Assem.

30. O.C.G.A. § 16-13-49(f) (Supp. 1991).

31. O.C.G.A. § 16-13-49(g)(1) (Supp. 1991).

32. *Id.*

33. O.C.G.A. § 16-13-49(g)(2) (Supp. 1991). Forfeiture proceedings are civil in nature, and hence not dependent upon the constitutional provisions required for criminal proceedings. O.C.G.A. § 16-13-49(g)(3) (Supp. 1991).

34. HB 72, as introduced, 1991 Ga. Gen. Assem. The seizing officer would have been required to notify the district attorney in writing within 30 days of the seizure. Within 60 days of receipt of the notice, the district attorney would have been required to file a complaint for forfeiture. *Id.*

35. HB 72 (HCS), 1991 Ga. Gen. Assem.

36. O.C.G.A. § 16-13-49(h)(1) (Supp. 1991).

37. O.C.G.A. § 16-13-49(h)(2) (Supp. 1991).

38. O.C.G.A. § 16-13-49(h)(3) (Supp. 1991).

Once property subject to forfeiture has been seized, the State must provide notice of the seizure to the owner.³⁹ If the person is present at the time of seizure, notice is presumed.⁴⁰ However, the district attorney or law enforcement officer seizing the property must provide notice by means of personal service, publication, or by mail to any owner or interest holder who was not present at the time of seizure.⁴¹

As introduced, HB 72 required that when notice was to be given by publication, the publication must be made "once a week for two weeks in the legal organ of the county in which the seizure occurs."⁴² The House Public Safety Committee changed this language, requiring that notice be given "by publication in two consecutive issues of a newspaper of general circulation in the county in which the seizure occurs."⁴³

Before the 1991 legislative session, no provision had been made for the State to file a lien for forfeiture of property.⁴⁴ The lien notice must contain the name of the person,⁴⁵ the description of the property, the criminal or civil proceeding that has been brought, the amount claimed, the name of the court where the action has been brought, and, if known, the case number of the proceeding.⁴⁶ The lien is applicable to the described property and to the named person; a separate lien is required for any other person.⁴⁷ The lien secures the amount of potential liability arising from a civil judgment in favor of the State.⁴⁸ Although the State is required to provide notice of the filing of the lien, failure to do so does not invalidate the lien.⁴⁹

When a trustee is given notice of a lien for forfeiture or notice of pending forfeiture, or when a civil forfeiture proceeding has been filed, the trustee is required within ten days to furnish the district attorney with the name and address of the person for whom the property is held, the names and addresses of all beneficiaries, and a copy of the trust agreement.⁵⁰ Failure on the part of the trustee to do so will result in the trustee committing a misdemeanor.⁵¹

39. O.C.G.A. § 16-13-49(i) (Supp. 1991).

40. O.C.G.A. § 16-13-49(i)(2) (Supp. 1991).

41. *Id.*

42. HB 72, as introduced, 1991 Ga. Gen. Assem.

43. O.C.G.A. § 16-13-49(i)(2)(C) (Supp. 1991).

44. O.C.G.A. § 16-13-49(j) (Supp. 1991) provides the district attorney with the ability to file a lien upon the initiation of any civil or criminal proceeding under the Act, as well as upon seizure of property. *Id.* The filing of the lien serves as notice to any person claiming an interest in the property. *Id.*

45. O.C.G.A. § 16-13-49(j)(1)(A) (Supp. 1991). The State, in its discretion, may choose to include in the lien notice any alias or enterprise owned or controlled by the named person. *Id.*

46. O.C.G.A. § 16-13-49(j)(1)(B) (Supp. 1991).

47. O.C.G.A. § 16-13-49(j)(2) (Supp. 1991).

48. O.C.G.A. § 16-13-49(j)(3) (Supp. 1991).

49. *Id.*

50. O.C.G.A. § 16-13-49(j)(5)(A)-(C) (Supp. 1991).

51. O.C.G.A. § 16-13-49(j)(6) (Supp. 1991).

The Act provides that any property taken or detained is deemed to be in the custody of the State of Georgia, subject only to the orders and decrees of the superior court that has jurisdiction over the forfeiture proceedings.⁵² The district attorney may release the property, transfer the action, or seek consolidation of the action with any other pertaining to the same property.⁵³

As introduced, HB 72 provided that an owner could obtain release of a conveyance seized by posting a surety bond.⁵⁴ The House Public Safety Committee Substitute deleted this provision.⁵⁵

When property is seized, the district attorney may either remove the property to a place designated by the court; place the property under constructive seizure; remove the property to a storage area, or, if the property is a negotiable instrument not needed for use as evidence, deposit it in an interest-bearing account; provide for another to take custody of the property; or require the sheriff or chief of police to take custody of the property.⁵⁶ As introduced, HB 72 also provided some measure of assistance to family members of the party whose conduct gave rise to the forfeiture proceeding.⁵⁷ The original version of the bill provided for the seizing law enforcement agency to have discretion, absent prohibition by court order, to permit a family member to use certain property during the pending forfeiture proceedings.⁵⁸ The House Public Safety Committee Substitute eliminated this possibility.⁵⁹ Additionally, as introduced, the bill retained the previous language allowing the use of photographs, photocopies, or videotapes of moneys seized and deposited as evidence at trial in lieu of the actual money.⁶⁰ This language was also deleted by the House Committee Substitute.⁶¹

52. O.C.G.A. § 16-13-49(k) (Supp. 1991). The property seized or detained is not subject to replevin, conveyance, sequestration, or attachment. *Id.*

53. *Id.* Consolidation of proceedings pertaining to the same property is discretionary if sought by the property owner, but mandatory if sought by the district attorney. *Id.*

54. HB 72, as introduced, 1991 Ga. Gen. Assem.

55. HB 72 (HCS), 1991 Ga. Gen. Assem.

56. O.C.G.A. §§ 16-13-49(1)(A)-(E) (Supp. 1991).

57. HB 72, as introduced, 1991 Ga. Gen. Assem.

58. *Id.* The property that could be used by a family member or a resident of the owner's household was limited to a single-family home and a passenger car. *Id.* In order to grant permission for the use of this property, the law enforcement agency was to first determine:

- (i) Such family member or household resident [was] innocent of any substantial involvement in the unlawful activity giving rise to the seizure of property;
- (ii) There [was] no substantial likelihood that allowing such use [would] result in the loss or destruction of or damage to the property; and
- (iii) A refusal to allow such use [would] result in a substantial hardship to the family member or household resident.

Id. If this use was permitted, the agency had the option of requiring security to be posted. *Id.*

59. HB 72 (HCS), 1991 Ga. Gen. Assem.

60. HB 72, as introduced, 1991 Ga. Gen. Assem.

61. HB 72 (HCS), 1991 Ga. Gen. Assem.

The House Public Safety Committee Substitute did, however, add language pertaining to seized property of a perishable nature.⁶² The court may order such property sold and the proceeds paid into the registry of the court pending final disposition of the action.⁶³ Additionally, language was added requiring that within thirty days of the seizure, the seizing agency must conduct an inventory of all seized property and estimate the property's value.⁶⁴

If the estimated value of personal property seized is less than \$25,000, the Act provides for an expedited procedure for the forfeiture proceeding.⁶⁵ Notice of the seizure is to be posted in a prominent location in the courthouse containing the following information: description of property, date and place of seizure, conduct giving rise to forfeiture, and the violation of law alleged.⁶⁶ Notice is also to be served on an owner, interest holder, or person in possession of the property at the time of seizure.⁶⁷ If notice is accomplished through publication, the notice must run for three successive weeks in a newspaper of general circulation.⁶⁸ The owner or interest holder has thirty days after the second publication to file a claim, sending the claim by certified mail to the seizing agency and the district attorney.⁶⁹ If a claim is filed, the district attorney must proceed with the complaint for forfeiture as provided in subsection (o) or (p) of the Code, joining the person who filed the claim.⁷⁰ If no claim is filed within the thirty day time period, the property is forfeited to the State.⁷¹

Although HB 72, as introduced, provided only for in rem proceedings,⁷² the House Public Safety Committee added provisions for in personam proceedings as well.⁷³ For actions in rem, the property sought by the State is named as the defendant.⁷⁴ The complaint should include a description of the property, the location of the property within the county, the present custodian of the property, the name of the owner if known, the place where the seizure occurred if the property was seized, the essential elements of the alleged violation, and a prayer of due process to enforce the forfeiture.⁷⁵ Service of the complaint and summons shall be served on any person known to be an owner and any person in possession

62. *Id.*

63. O.C.G.A. § 16-13-49(l)(2) (Supp. 1991).

64. O.C.G.A. § 16-13-49(m) (Supp. 1991).

65. O.C.G.A. § 16-13-49(n) (Supp. 1991).

66. O.C.G.A. § 16-13-49(n)(1) (Supp. 1991).

67. O.C.G.A. § 16-13-49(n)(2) (Supp. 1991).

68. *Id.*

69. O.C.G.A. § 16-13-49(n)(3) (Supp. 1991).

70. O.C.G.A. § 16-13-49(n)(5) (Supp. 1991).

71. O.C.G.A. § 16-13-49(n)(6) (Supp. 1991).

72. HB 72, as introduced, 1991 Ga. Gen. Assem.

73. HB 72 (HCS), 1991 Ga. Gen. Assem.

74. O.C.G.A. § 16-13-49(o)(1) (Supp. 1991).

75. *Id.*

of the property.⁷⁶ A claim may be asserted by an owner or interest holder filing an answer within thirty days after service.⁷⁷ The answer must be verified, and must comply with the general rule applicable to answers in civil actions.⁷⁸ If no answer is filed, the court shall order the disposition of the seized property.⁷⁹ If an answer is filed, a hearing must be held by the court without a jury within sixty days of the service of the complaint.⁸⁰

An in personam action shall follow the same basic procedures as an action in rem.⁸¹ However, any interest holder or person in possession of the property named in the complaint may seek to join the action.⁸² The House Public Safety Committee Substitute provided that a hearing would be held within forty-five days after service of the complaint if an answer was filed.⁸³ The Senate Judiciary Committee changed this language,⁸⁴ setting forth the same sixty-day time frame found in actions in rem.⁸⁵ Once a court finds liability against the defendant in an in personam action, the court must enter a judgment of forfeiture against property described in the complaint, and authorize the seizure of all property ordered forfeited not previously seized.⁸⁶ Intervention is not permitted in the trial or appeal of a criminal action or in an in personam civil forfeiture proceeding except as expressly provided.⁸⁷

In conjunction with any civil or criminal action brought under this Act, the court may enter restraining orders, require performance bonds, appoint receivers, and order the seizure of any property.⁸⁸ Additionally, a temporary restraining order may be issued without notice or opportunity to be heard if the State demonstrates that there is probable cause to believe the property is subject to seizure and that notice would jeopardize the availability of the property.⁸⁹ When a restraining order is entered, notice and an opportunity to be heard must be provided.⁹⁰ As introduced, the Act required that the issues be limited to whether there was a probability that the State would prevail, and whether the need to preserve the availability of the property outweighed the hardship on any owner, family

76. O.C.G.A. § 16-13-49(o)(2) (Supp. 1991).

77. O.C.G.A. § 16-13-49(o)(3) (Supp. 1991).

78. *Id.*

79. O.C.G.A. § 16-13-49(o)(4) (Supp. 1991).

80. O.C.G.A. § 16-13-49(o)(5) (Supp. 1991). A continuation may be granted for good cause. *Id.* An action in rem may be brought in addition to any other action. O.C.G.A. § 16-13-49(o)(6) (Supp. 1991).

81. O.C.G.A. § 16-13-49(p)(1)–(3), (5) (Supp. 1991).

82. O.C.G.A. § 16-13-49(p)(4) (Supp. 1991).

83. HB 72 (HCS), 1991 Ga. Gen. Assem.

84. HB 72 (SCS), 1991 Ga. Gen. Assem.

85. O.C.G.A. § 16-13-49(p)(6) (Supp. 1991).

86. O.C.G.A. § 16-13-49(p)(7) (Supp. 1991).

87. O.C.G.A. § 16-13-49(p)(8) (Supp. 1991).

88. O.C.G.A. § 16-13-49(q)(1) (Supp. 1991).

89. O.C.G.A. § 16-13-49(q)(2) (Supp. 1991).

90. O.C.G.A. § 16-13-49(q)(5) (Supp. 1991).

member, household resident, or interest holder.⁹¹ The House Public Safety Committee Substitute eliminated the language pertaining to family members and household residents.⁹²

If property is seized for forfeiture or a forfeiture lien is filed without a judicial determination of probable cause, the owner may file an application to the court within thirty days seeking cause.⁹³ If the court finds no probable cause, the property must be released pending the resolution of the proceeding.⁹⁴ Property that has been seized may be sold by court order to satisfy a specified interest of any interest holder, provided that certain conditions are met.⁹⁵

Once a defendant is convicted in a criminal proceeding, she is prevented from denying the essential elements of the offense that gave rise to the forfeiture proceeding.⁹⁶ An acquittal or dismissal of a criminal action, which is the basis for the forfeiture proceeding, shall not preclude the continuation of the civil proceeding.⁹⁷ Additionally, an inference arises that money and negotiable instruments found in close proximity to contraband are proceeds of conduct giving rise to forfeiture.⁹⁸ When a person engages in conduct that gives rise to a forfeiture proceeding, and property was acquired at or near the time of the conduct with no other likely source for the property, a rebuttable presumption is created that probable cause exists for its forfeiture.⁹⁹

Property declared forfeited vests in the State at the time the conduct giving rise to forfeiture is committed.¹⁰⁰ If a claimant fails to establish an

91. HB 72, as introduced, 1991 Ga. Gen. Assem.

92. HB 72 (HCS), 1991 Ga. Gen. Assem.

93. O.C.G.A. § 16-13-49(q)(4) (Supp. 1991).

94. *Id.*

95. O.C.G.A. § 16-13-49(q)(5) (Supp. 1991). The conditions required to be met are found in subsections (A)–(C). Subsection (A) provides:

The interest holder has filed a proper claim and:

(i) Is authorized to do business in this state and is under the jurisdiction of a governmental agency . . . which regulates financial institutions, securities, insurance, or real estate; or

(ii) Has an interest that the district attorney has stipulated is exempt from forfeiture;

O.C.G.A. § 16-13-49(q)(5)(A) (Supp. 1991). Additionally, the interest holder is required to sell the property in a commercially reasonable manner, and to apply the proceeds to its interest and then reasonable expenses incurred in the sale. O.C.G.A. § 16-13-49(q)(5)(B) (Supp. 1991). Any remaining proceeds are to be returned to the court. O.C.G.A. § 16-13-49(q)(5)(C) (Supp. 1991).

96. O.C.G.A. § 16-13-49(r) (Supp. 1991). However, the pendency of an appeal is admissible.

Id.

97. O.C.G.A. § 16-13-49(v) (Supp. 1991).

98. O.C.G.A. § 16-13-49(s) (Supp. 1991).

99. *Id.*

100. O.C.G.A. § 16-13-49(t)(1) (Supp. 1991). As such, any property later transferred is subject to forfeiture. *Id.*

exemption for a property interest claimed, the claimant will be charged reasonable costs incurred in disproving the claim.¹⁰¹

If no longer needed for evidentiary purposes, any property that is required by law to be destroyed may be destroyed or forwarded to an appropriate agency for destruction or use that is not prohibited by law.¹⁰² Property other than money may be either sold or distributed in-kind.¹⁰³ Property shall be sold at the court's discretion either by judicial sale or by any commercially feasible means.¹⁰⁴

All forfeited property and proceeds are to be pooled, costs paid, and distributed.¹⁰⁵ As introduced, HB 72 provided that at least twenty-five percent of the total pool be distributed to the county where the forfeiture proceeding took place; the remainder of the pool is distributed pro rata to state and local governments in accord with the role each played.¹⁰⁶ The House Public Safety Committee Substitute changed the distribution calling for the whole pool to be divided pro rata with the condition that the State not receive greater than fifty percent.¹⁰⁷ The Senate Judiciary Committee Substitute again changed the distribution plan calling for pro rata distribution with the limitation on the State's share set at twenty-five percent, and providing that the court could award an amount not to exceed ten percent of the value of the forfeited property to the district attorney's office bringing the forfeiture action.¹⁰⁸ The bill was further amended during floor debate in the Senate by deleting the language pertaining to the power of the court to award ten percent of the pool to the district attorney's office. Instead, county governments are authorized to provide payment to the district attorney's office for expenses relating to the forfeiture up to a maximum of ten percent of the distributed pool.¹⁰⁹

As introduced, HB 72 provided that funds distributed for local governments would be paid into the general fund, and would be used for law enforcement purposes, drug abuse treatment, and education.¹¹⁰ Upon the order of the superior court, local agencies would be required to submit a sworn statement within six months of receipt of the funds to the judge who ordered the disposition, detailing expenditures made and the balance remaining.¹¹¹ Funds paid to the State would have been paid into the

101. O.C.G.A. § 16-13-49(t)(3) (Supp. 1991).

102. O.C.G.A. § 16-13-49(u)(1) (Supp. 1991).

103. O.C.G.A. § 16-13-49(u)(2) (Supp. 1991).

104. O.C.G.A. § 16-13-49(u)(3) (Supp. 1991). The Senate Judiciary Committee Substitute provided that listing real estate with a licensed real estate agent was not the only acceptable means of selling real property. HB 72 (SCS), 1991 Ga. Gen. Assem.

105. O.C.G.A. § 16-13-49(u)(4) (Supp. 1991).

106. HB 72, as introduced, 1991 Ga. Gen. Assem.

107. HB 72 (HCS), 1991 Ga. Gen. Assem.

108. HB 72 (SCS), 1991 Ga. Gen. Assem.

109. HB 72 (SCSFA), 1991 Ga. Gen. Assem. O.C.G.A. § 16-13-49(u)(4)(b) (Supp. 1991).

110. HB 72, as introduced, 1991 Ga. Gen. Assem.

111. *Id.*

general fund with the intention that they fund law enforcement agency programs, especially advanced drug investigative training.¹¹²

The House Public Safety Committee Substitute added language limiting the funds available for the seizing law enforcement agency to one-third of the amount of local funds appropriated for the fiscal year; the remaining proceeds from forfeiture were for other law enforcement needs and drug treatment, rehabilitation, prevention, education, or other problems created by the use of drugs.¹¹³ The substitute also changed the language pertaining to local government reports. It requires that any agency that receives proceeds from a forfeiture submit an annual report to the governing authority, at the time the budget request is submitted, itemizing property received and the use of such property.¹¹⁴ The language pertaining to the use of funds received by the State was unchanged.¹¹⁵

The Senate Judiciary Committee Substitute added funding victim-witness assistance programs to the list of possible local government uses.¹¹⁶ Added to the list of possible state uses were the Crime Victims Emergency Fund; prosecution programs; advanced drug training for prosecuting attorneys; drug treatment, rehabilitation, prevention, education, and other programs responsive to the problems created by drugs; matching funds in grant programs; and financing the judicial system.¹¹⁷ Debate on the floor of the Senate led to the addition of one more possible local use: the representation of the indigent in criminal cases.¹¹⁸ For the State, the additional use of funding the Georgia Indigent Defense Act was allowed.¹¹⁹

HB 72, as introduced, gave a sheriff or district attorney discretion to request that up to a maximum of twenty-five percent of the proceeds from forfeited property be paid as a reward to a person who furnished information in connection with the forfeiture proceeding.¹²⁰ This provision was deleted from the House Public Safety Committee Substitute.¹²¹ Additionally, as introduced, the bill provided protection to family members and household residents by granting the court the ability to order that certain property be transferred to them to avoid forfeiture to the State.¹²²

112. *Id.*

113. HB 72 (HCS), 1991 Ga. Gen. Assem.

114. *Id.*

115. *Id.*

116. HB 72 (SCS), 1991 Ga. Gen. Assem.

117. *Id.*

118. HB 72 (SCSFA), 1991 Ga. Gen. Assem.

119. *Id.*

120. HB 72, as introduced, 1991 Ga. Gen. Assem. Provisions in the bill stipulated that proceeds from forfeited property were not to be paid to any law enforcement officer. *Id.*

121. HB 72 (HCS), 1991 Ga. Gen. Assem.

122. HB 72, as introduced, 1991 Ga. Gen. Assem. provided:

Where property forfeited . . . consists of a single-family home or passenger motor vehicle, the court may order the transfer of such property to a family member of the defendant or a resident of the defendant's household if the court

The House Public Safety Committee Substitute does not take into consideration any impact that may occur to family members of the defendant whose conduct gave rise to the forfeiture proceeding.¹²³

The court has the power to order any property of a claimant or defendant forfeited up to the maximum of the forfeiture judgment if any of the forfeited property is unavailable.¹²⁴ No actions may be brought against the State by any interest holder except as provided.¹²⁵

The Act mirrors its federal counterpart¹²⁶ by requiring that the provisions of the Act are to be liberally construed.¹²⁷

Debra D. Green

determines ... [the] family member or household resident is innocent of any substantial involvement in the ... activity giving rise to the forfeiture; and ... [t]he loss of use ... would result in a substantial hardship on the family member

Id.

123. HB 72 (HCS), 1991 Ga. Gen. Assem.

124. O.C.G.A. § 16-13-49(x)(1) (Supp. 1991). Reasons for the unavailability of the property are contained in O.C.G.A. § 16-13-49(x)(1)(A)–(E). The property is considered unavailable when it:

- (A) Cannot be located;
- (B) Has been transferred or conveyed to, sold to, or deposited with a third party;
- (C) Is beyond the jurisdiction of the court;
- (D) Has been substantially diminished in value while not in the actual physical custody of the receiver or governmental agency directed to maintain custody of the property; or
- (E) Has been commingled with other property that cannot be divided without difficulty.

Id.

125. O.C.G.A. § 16-13-49(x)(4) (Supp. 1991).

126. 21 U.S.C. § 853 (1986).

127. O.C.G.A. § 16-13-49(z) (Supp. 1991).