

Forfeiture

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Categories : [Procedure](#), [Sentencing](#), [Uncategorized](#)

Tagged as : [equitable sharing](#), [forfeiture](#)

Date : May 3, 2010

I've been asked a couple of questions related to forfeiture lately, which has led me to realize that I don't know much about it. So I'll offer a little information below, and in exchange, will ask for some information from readers who know whether, and how, forfeiture is being used around the state.

Forfeiture generally refers to the transfer of property from the defendant (or sometimes a third party) to the government as a result of the property's involvement in criminal activity. For example, it might be used to deprive the defendant permanently of money he obtained by selling drugs, or of a car he used in transporting the drugs.

There are two general types of forfeiture. In criminal forfeiture, the court imposes forfeiture on the defendant as a part of the defendant's punishment. In civil forfeiture, the government files a civil lawsuit *against the property itself* -- which leads to goofy case names like *United States vs. One Thousand Six Dollars and a 1987 Chevrolet Camaro*. Anyone who wants to contest the forfeiture must intercede in the lawsuit. A slightly more detailed explanation of these two kinds of forfeiture is [here](#).

North Carolina's two principal forfeiture statutes are:

- G.S. 14-2.3, which generally provides that property acquired as a result of a felony is subject to forfeiture. The statute states that "[a]n action to recover such property shall be brought by either a District Attorney or the Attorney General pursuant to G.S. 1-532." Chapter 1 of the General Statutes is entitled "Civil Procedure" and G.S. 1-532 says that "an action for the recovery of [property subject to forfeiture], alleging the grounds of the forfeiture, may be brought by the proper officer in any superior court," which makes it sound as though G.S. 14-2.3 is a civil forfeiture provision. However, G.S. 14-2.3 requires that "[t]he action must be brought within three years from the date of the *conviction for the offense*." Civil forfeiture doesn't generally require a conviction, so perhaps G.S. 14-2.3 is actually some sort of hybrid statute. Only two appellate cases even cite G.S. 14-2.3, and neither clarifies this issue. Of course, that makes me wonder if this provision is ever used at all.
- [G.S. 90-112](#), which provides for the forfeiture of a wide range of property that is acquired through, used in, or intended to be used in certain drug offenses. This is a criminal forfeiture statute that requires a criminal conviction. *See, e.g., State v. Jones*, 158 N.C.App. 465 (2003).

There are other forfeiture statutes, too, such as [G.S. 20-28.3](#), which provides for forfeitures in certain impaired driving offenses. But I'm especially interested in the general and drug forfeiture statutes summarized above. So here's the request: please let me know whether these provisions are being used, and if so, when, how, and by whom. If most forfeiture is being done under the auspices of the [federal equitable sharing program](#) -- where state officers conduct the investigation, but federal authorities effect the forfeiture and share the proceeds with the state agency -- I'd be interested in that. If there are recognized experts on forfeiture practice in the state -- either on the state's side or the defense -- or if there are authoritative written materials on this issue, I'd be much obliged to learn about that, too. As always, you can post a comment or you can call or email me with your thoughts.