



17th St. & Constitution Avenue N.W.
Washington, D.C. 20006
United States of America

Organization of American States

P. 202.458.3000
www.oas.org

INTER-AMERICAN DRUG ABUSE
CONTROL COMMISSION
CICAD

Secretariat for Multidimensional Security

XXXVI GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING
May 30-31, 2013
Washington, D.C.

OEA/Ser.L/XIV.4.36
CICAD/doc.5/13
30 May 2013
Original: Español

BEST PRACTICES ON ASSET FORFEITURE
THE COLOMBIAN EXPERIENCE
JULIO OSPINO, GENERAL ATTORNEY OFFICE, COLOMBIA

BEST PRACTICES ON ASSET FORFEITURE

THE COLOMBIAN EXPERIENCE



FEATURES OF THE ASSET CONVEYANCE IN COLOMBIA

There are two asset conveyance systems: criminal recovery and *in rem* forfeiture. Background:

§ In the criminal procedures there is a distinction between the methods of asset conveyance and assets within the judicial process: asset forfeiture, restitution of rights, destruction, *in rem* forfeiture, etc.

§ The criminal forfeiture is a punitive and restricted sanction to the assets of illicit origin or destination of the criminally responsible.

§ The *in rem* forfeiture process has a constitutional nature and the circumstances of illegality are based on levied goods and not on people.

g Criminal confiscations and *in rem* forfeitures are legal under the same constitutional provisions

g The criminal forfeiture serves as a deterrent as well as for punitive and preventive purposes

g The criminal forfeiture generally complies with international standards

g Given the adversarial nature of the criminal procedures, the forfeiture has limitations that are overcome through *in rem* forfeiture



IN REM FORFEITURE

Legal procedure designed to combat the economic power of organized crime

Overcomes the difficulties of seizures within the traditional process.



It is an autonomous procedure, different and independent from the criminal liability of the owner of the property.

JUSTIFICATION

- g The need for a new legal institution against the economic power of the so-called “organized criminality”
- g To overcome limitations of criminal recovery – Legal persons, minors, bona fide third parties, deceased, etc.
- g To embody an action that transcends personal responsibility.
- g To have a retrospective application tool in order to avoid the consolidation of illicit assets.

CODE PROJECT ON *IN REM* FORFEITURE



Need for special regulation of all procedural aspects

Interest in having a harmonious system of asset conveyance

Measure to overcome the current procedure for asset investigations



Reviewing the effectiveness of the current scheme of criminal procedure (inquisitorial)

Need to have a more efficient procedure reducing, the length of the processes and increasing procedural safeguards

PROPOSALS


Constitutionalisation of the procedural scheme

Integration of all necessary legal institutions in the process of *in rem* forfeiture according to the principles of the due process consistent with the legal nature and the real character of the action

Abolishment of the limitation of the *in rem* forfeiture currently is only applicable to certain criminal offenses to be legally applicable to all criminal cases

Establishment of a state wide *in rem* forfeiture network comprised of judges and prosecutors throughout national territories

Strengthening of the asset investigation, defining clear purposes for the initial phase as essential requirement before the starting the *in rem* forfeiture trial



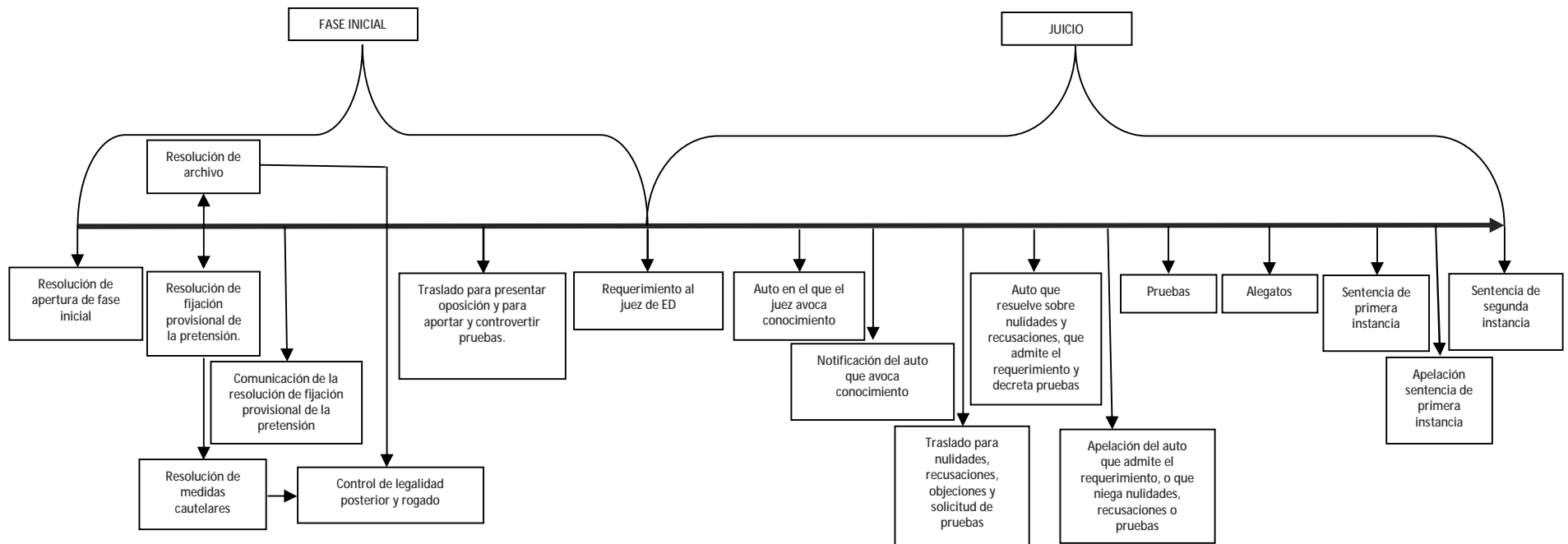
Establishment of clear criteria for managerial, technical, functional, operational and legal coordination standards of the investigations carried out by prosecutors, using special investigative techniques.

Implementation of special rules and principles according to the judiciary nature and special instances related to *in rem* forfeiture action

Establishment of standard procedures for appropriate and consistent management of forfeited assets

Development of a comprehensive chapter for international cooperation in investigation, identification, seizure of assets, trial support and enforcement of sentences

PROPOSED SCHEME PROCEDURE





ASSET COVEYANCE IN <i>IN REM</i> FORFEITURE PROCEDURES		
Asset conveyance	"Start"	44,270
Ill-gotten assets		16,331
Licit assets		4,822
Judgement "Declaring <i>in rem</i> forfeiture"		10,384
Retourned Assets	+ "Entreg.Intervent DMG"	1,934



THANK YOU
juospino@hotmail.com