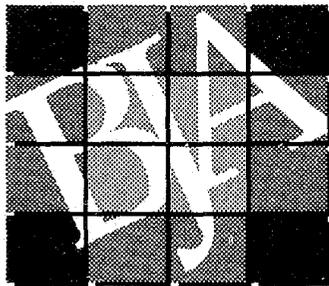


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Bureau of Justice Assistance



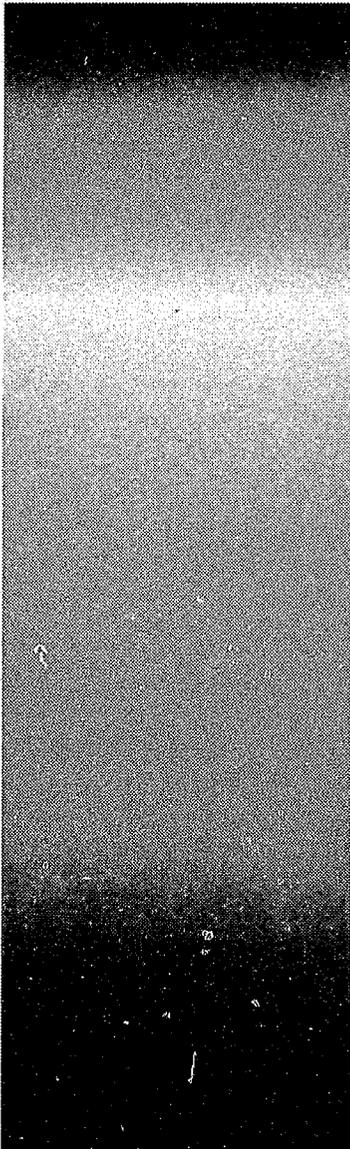
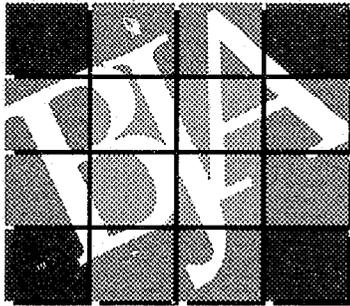
Bureau of Justice Assistance

State Civil RICO Programs

139457

PROGRAM BRIEF

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PROGRAM BRIEF

December 1992
NCJ 139457

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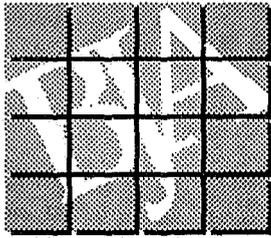


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INTRODUCTION

Federal civil RICO—the Racketeer Influenced and Corrupt Organizations Act—was enacted in 1970 to assist the fight against organized crime. The Federal statute, 18 U.S. C. §§ 1961–1968, and some 30 State RICO's patterned after it offer the law enforcement community and crime victims some of the strongest weapons against ongoing, organized crime. RICO has proven effective in disrupting drug trafficking and in attacking organized fraud and public corruption.

RICO statutes commonly include both stiff criminal penalties (“criminal RICO”) and expansive civil remedies (“civil RICO”). A conviction under Federal RICO, for example, mandates a 20-year prison sentence and forfeiture of any interest the defendant has in the named “enterprise.” Civil remedies include treble damages; the costs of investigation and prosecution, including attorneys’ fees; and far-reaching equitable relief.

State RICO statutes often furnish even more potent civil remedies, including civil forfeiture and civil penalties, and afford State prosecutors authority to sue on behalf of the State and its citizens who suffer “business or property” injury. A number of States have actively employed their State RICO's to attack drug traffickers and illegal gambling operations, as well as perpetrators of charitable, consumer, and tax fraud. Other States have employed Federal RICO to attack public corruption and environmental fraud.

RICO alters law enforcement strategies in a number of critical ways. Whereas traditional enforcement efforts simply react to apparently isolated crimes, RICO proactively focuses investigations on groups of people engaged in patterns of offenses, placing a premium on identifying and chasing “dirty” money, and ruining the criminals financially.

RICO also substantially expands the boundaries of admissible evidence. Because proving a RICO violation necessarily requires showing an ongoing pattern of wrongdoing, the law expressly makes relevant past

crimes and other offenses connected to the criminal enterprise that might otherwise be inadmissible as immaterial or unduly prejudicial.

RICO prohibits the commission of a “pattern of racketeering activity” *by, through, or for* an enterprise. “Racketeering activities” are specific felonies—crimes of violence, the provision of illicit goods and services (like drugs), private or public corruption, and fraud—enumerated in RICO statute. A “pattern of racketeering” means a multiplicity of these racketeering acts that occur, or threaten to occur, over time.

What sets RICO apart is that it targets the economic foundation of organized criminality more than individual wrongdoers. Certain forms of crime are so profitable that they become quasi-institutionalized, and the confederates, especially at lower levels, become interchangeable. As a consequence, merely disabling individual offenders through incarceration has little impact on the enterprise's vitality or criminal capacity.

RICO is predicated on the theory that crime motivated by greed and profit (rather than passion, mental disease, or poverty) is deterrable if (1) the economic costs to the perpetrator are sufficiently severe and (2) the incentives for enforcement by government and by private citizens are sufficiently rewarding.

This theory is borne out by the experience of State attorneys general who employ RICO. In offices that have had dedicated civil RICO units over the past few years, the civil RICO caseload has grown rapidly, resulting in substantial rises in forfeitures and civil penalties. In offices that have developed RICO expertise, although not a dedicated unit, RICO nevertheless has shown itself to be a powerful weapon in the arsenal of State prosecutors.

This publication offers an overview of the elements necessary to an effective State civil RICO prosecution effort. It reviews the purpose of a civil RICO unit;

the critical elements necessary for an effective civil RICO program; administrative factors to consider in establishing a unit; issues that may arise in prosecuting a civil RICO case; the experience of pilot civil RICO units; and the elements of an effective State RICO statute. The *Program Brief* concludes with a short bibliography of relevant resources and texts.

PROGRAM PURPOSE

The 1992 National Drug Control Strategy identifies the need for effective State forfeiture laws as weapons in the war on drugs and State "legislation tailored to the increased sophistication of today's drug trade." Consistent with this approach, civil RICO seeks to disrupt the infrastructure of organized criminality and strip drug traffickers and other criminals of their assets.

The major goal of a civil RICO program is to remove the profit motive from drug trafficking and other forms of ongoing, organized criminality. The purpose of the BJA program is to assist State attorneys general and other prosecutors by developing their capacity to apply this novel law effectively against ongoing, organized criminality.

The objectives of the BJA civil RICO program are to:

- Increase awareness in the law enforcement community and among lawmakers of enterprise crime.

- Provide expert assistance to State attorneys general and lawmakers in fashioning effective RICO-type legislation to respond to enterprise crime.
- Furnish assistance to State attorneys general in establishing dedicated civil RICO units in their offices.
- Provide training to civil RICO units, to State attorneys general, and to prosecutorial staff in conducting proactive financial investigations and prosecuting civil RICO cases.
- Disseminate publications, training videos, and relevant software to keep civil RICO unit staff members current on jurisprudence and civil RICO practice.
- Provide expert consultation to State attorneys general and local prosecutors.

CRITICAL ELEMENTS TO A SUCCESSFUL CIVIL RICO PROGRAM

As heretofore indicated, a successful civil RICO program—operating through a dedicated civil RICO unit—has the following key elements:

- An effective civil RICO statute that affords an attorney general broad investigative authority as well as potent legal and equitable remedies.
- Financial investigative capacity to identify suspicious transactions, uncover concealed assets, and track currency movements.
- Civil litigation expertise to ensure that civil procedures and litigation strategy are optimally employed.
- Knowledge or easy access to knowledge of criminal law, because civil RICO suits are predicated on underlying violations of Federal and State criminal codes.
- The development of model forms and pleadings suited to the local legal culture.
- The elaboration of case selection criteria to clarify the scope of the civil RICO unit's docket and the unit's procedures to standardize institutional practice and strengthen institutional memory.
- Solid rapport with other State and local law enforcement agencies because case referrals will come from these sources.
- Ongoing training for unit staff personnel and for cooperating State and local law enforcement agencies to ensure that each case is undertaken from the beginning with an understanding of civil RICO procedures and what must be proved.

FORMING A CIVIL RICO UNIT

Placement of a Civil RICO Unit

The particular characteristics of a State's RICO statute and the priorities of an attorney general are the most important factors in the placement of a civil RICO unit in the office of an attorney general. Some State RICO statutes are limited in their reach; e.g., to narcotics offenses, whereas others are quite broad, incorporating all Federal RICO predicate racketeering offenses and numerous other State offenses as well. (See the appendix for a model to consider in creating a State RICO statute.) Also, because RICO statutes are both criminal and civil in character, the question arises as to the appropriateness of the unit's location in an attorney general's office.

Where a statute is narrowly drawn to encompass only drug and traditional organized crime violations, the unit best fits in the narcotics or organized crime section of the office. If, however, the office also uses its State or the Federal RICO statute to prosecute civilly business fraud and public integrity cases, then the unit belongs in the civil division. There it can draw on the litigation experience, expertise, and resources of civil practitioners. Nevertheless, since civil RICO cases are based on underlying patterns of serious criminal conduct, the unit needs ready access to the criminal division, in order to draw on its expertise regarding predicate racketeering acts and ensure that parallel criminal prosecutions are not compromised by a civil action.

What Civil RICO Units Provide

The amount of staff attention and resources that an office devotes to any aspect of a civil RICO unit will vary depending on local circumstances. Typically, civil RICO units furnish legal expertise, investigative assistance, property management, and training to law enforcement agencies. Units are composed of

lawyers, investigators, paralegals, property managers, and secretaries. The placement of the unit affects whether it must furnish all of this talent or whether it can draw upon other inhouse staff resources.

Legal expertise. RICO statutes typically involve several novel legal concepts, especially the "pattern" and "enterprise" elements, which are unfamiliar to all but RICO practitioners. In addition, a number of frequently perplexing legal questions arise regarding such issues as parallel proceedings, forfeitures, and immunity, which require a sophisticated and specialized knowledge of RICO. At least one of the unit's attorneys should have civil RICO expertise and litigation experience or, failing that, civil litigation experience and special expertise in complex financial crimes. At least one unit attorney should also be versed in real property law to assist the property manager. Optimally, the unit would include at least two trial attorneys; at a minimum it would have one experienced attorney.

Investigative assistance. Typically, a civil RICO investigation will require asset or currency tracing, which necessitates a comprehensive command of documentary evidence gathering and analytical techniques (for example, analysis of net worth) suited to investigating financial crime. Investigators should have a background in accounting, real estate, finance, or a related field, and experience in investigating white-collar or financial crime cases. Specific training in civil RICO is provided by the National Association of Attorneys General (NAAG) and various legal publications; relevant training in financial crimes and asset forfeiture is offered by NAAG, the Bureau of Justice Assistance (BJA), the Internal Revenue Service (IRS), and other government and nonprofit entities. Appendix B describes a variety of training and technical assistance resources. A pool of knowledgeable investigators will be critical in eliciting referrals and coordinating investigations with cooperating agencies; it is preferable that they have working relationships and contacts in law enforcement agencies. Finally, because civil RICO cases often

involve complex "paper trails," investigators must be exceptionally persistent. Optimally, a unit would have several investigators; however, since the unit commonly assists in the investigation by an originating agency, one skilled investigator is sufficient to get started.

Paralegal assistance. Because civil RICO cases tend to involve a multiplicity of defendants and offenses, good case management skills are especially important. This is a function well suited to the experience and professional training of a paralegal. In addition, a substantial portion of the legal research can be conducted by a trusted paralegal. Funding levels permitting, a paralegal is a cost-effective and valuable addition to the unit.

Clerical support. The unit secretary must be able to perform all the usual clerical functions. In addition, in the event of severe understaffing, the secretary must be especially versatile, serving as a "gap filler" to undertake case management functions that otherwise would be assigned to a paralegal.

Property management. While police are accustomed to preserving seized property as evidence for trial and have grown familiar with collecting forfeited motor vehicles, RICO and related forfeiture remedies dramatically multiply the amount and kind of properties that may be seized and forfeited, including realty. Without careful property management, States may find that the seized and forfeited assets dissipate or that maintenance costs exceed a property's value. Property management today involves a knowledge of insurance and title requirements and of government regulations, and even carries the risk of liability for environmental contamination. This may be the single most significant service the unit can provide to other agencies.

An in-house property manager should have a business background. The property manager can provide pre-seizure planning; advise unit lawyers;

help plan and execute seizures; and arrange for the inventorying and transportation of seized property. The management of ongoing businesses and real property, storage and maintenance of vehicles, and the conduct of appraisals and sales should be contracted out to private service providers.

Law enforcement training. As a proactive weapon, civil RICO's optimal use requires that investigations be conducted from the outset with an eye to maximizing a case's forfeiture potential. This means that investigators must receive adequate training in RICO's key elements and remedial provisions. To this end, the civil RICO unit investigator should attend as many relevant training programs as possible to ensure state-of-the-art investigative capability. Moreover, the unit should offer regular training sessions for members of cooperating law enforcement agencies, in particular, the training of narcotics, fraud, and organized crime investigators. Such training programs serve as a forum for exchanging ideas and approaches and enable unit members to develop personal contacts, thereby enhancing the prospects for case referrals.

Becoming Operational

Successful implementation requires staff training, the collection of necessary resources, the adoption of unit procedures, the publication of case selection criteria, and the publicizing and promotion of the unit's existence to the law enforcement community. As the unit gains experience, it should prepare a manual with written descriptions of its operational procedures and case selection guidelines to ensure internal consistency and trusted working relationships with cooperating law enforcement agencies. The unit must advertise its existence in order to elicit case referrals. The unit's success in developing impact cases will ultimately depend on its outreach to law enforcement agencies and its ability to overcome "turf" issues.

FEATURES OF AN EFFECTIVE STATE RICO STATUTE

Like Federal RICO, State RICO statutes target patterns of crime committed by, against, or through an "enterprise." Comprehensive RICO statutes prohibit (1) investing the proceeds of a "pattern of racketeering activity" in an enterprise, (2) taking control of an enterprise through a pattern of racketeering, (3) infiltrating an enterprise and engaging in a pattern of racketeering through it, and (4) conspiring to do any of the above. Typically, State RICO statutes address all or most of this conduct. (See appendix A for a model State statute.)

Violations of RICO give rise to enhanced criminal sanctions, potent civil remedies, and far-reaching provisional and permanent equitable relief. The punitive and remedial provisions of the statute need careful consideration, particularly with regard to criminal or civil forfeiture, civil penalties, and treble damages.

A number of States have dropped the term "racketeer" from the title and language of their statutes. Although RICO is a catchy acronym, and "racketeer" connotes a serious offender, these terms have downsides that argue for their substitution. "Racketeering activity" is a broad term that encompasses many crimes not ordinarily thought of as racketeering, notably white-collar fraud. In such cases, the term "racketeer" may strike a judge or jury as inappropriate and might prejudice a meritorious suit; moreover, its pejorative connotations might offend a defendant and dissuade him from pleading or settling. States may

prefer a term like "criminal profiteering activity." To avoid undue limitations on the statute's reach, a statement of purpose should be included, asserting that the RICO act targets organized, ongoing criminal activity and its distorting and corrupting influences on the economy and political system. Similarly, a liberal construction clause should be included to emphasize that the statute should be interpreted to advance its remedial purposes.

Special civil investigative authority should be vested in the attorney general, giving him or her or a designee the equivalent of criminal subpoena power and other investigative tools.

The RICO statute should reference and include a wide array of State and Federal offenses known as "racketeering" acts. To combat conglomerate modern crime organizations effectively, it is critical that State RICO statutes include racketeering acts that target fraud and corruption.

RICO statutes include a number of novel elements, particularly "pattern" and "enterprise." The pattern element focuses the statute on repeat offenders; the enterprise element focuses it on criminal activity in conjunction with, or in the infiltration of, organizations. These terms must be carefully defined to avoid the ambiguities that have spawned considerable litigation under the Federal RICO statute.

PROSECUTING A CIVIL RICO CASE

Effective prosecution requires a mastery of elements unique to RICO, particularly its "pattern" and "enterprise" elements. Because RICO provides civil redress for the commission of ongoing, specified felonies, its successful civil prosecution requires a knowledge of substantive criminal law and civil litigation procedures.

RICO demands judicious use. A Federal court of appeals recently described RICO as "the litigation equivalent of a thermonuclear device." It is a relatively complex statute; hence, the danger of causing unnecessary confusion must be considered. Because RICO requires a multiplicity of felonies and proof of certain elements unique to RICO, it imposes a stiff set of burdens on the prosecutor. RICO's racketeer terminology may constitute overly inflated "fighting talk" that could prejudice a particular case or make a defendant unnecessarily combative. Judges are often hostile to civil RICO, wary of presiding over RICO claims that may be included as boilerplate in everyday business disputes. RICO frequently gives rise to extensive motions practice; the case law is in flux; there frequently are parallel proceedings considerations; and the inducements of treble damages, forfeiture, and civil penalty may distort law enforcement objectives.

Many cases are appropriate for civil RICO, however, and they offer prosecutors enhanced discovery, freer

rein at trial, a cornucopia of potent remedies, and powerful incentives to settle on terms favorable to the government. Consider that:

- RICO enables a prosecutor to "look back" and present evidence on events occurring as much as 10 years earlier, from one act of racketeering to a previous one, greatly expanding the scope of permissible discovery.
- Prosecutors are equipped with enhanced investigative tools such as civil subpoenas that are commonly available only in criminal prosecutions.
- At trial, proving the "pattern" and "enterprise" renders evidence admissible that might otherwise be irrelevant or prejudicial and enables the prosecutor to sketch a holistic picture for the judge and jury.
- Provisional relief is typically available without having to show irreparable harm.
- Far-reaching equitable relief such as reporting requirements, divestiture, dissolution, delicensing, and reorganization is available.
- Civil RICO's legal remedies are extraordinary, including treble damages, attorneys' fees and costs, civil forfeiture, and civil penalties.

PROGRAM EXPERIENCE

Civil RICO has a crippling effect on ongoing criminal enterprises. It reaches facilitators; it affords prosecutors the advantages of civil discovery and civil procedure. By attacking the illegal enterprises' financial engine, civil RICO makes the continued operation of target criminal enterprises difficult or impossible. Loyalty to a criminal enterprise dissolves when the income stream is dammed.

Between 1989 and 1992, four offices of State attorneys general—in Arizona, Colorado, Oregon, and Washington—received grant support from BJA to develop civil RICO projects to attack drug trafficking. In addition, a number of other States have employed civil RICO against drug violators, public corruption, and a variety of fraud cases. The experience of BJA grant-funded States and other States using civil RICO has been extremely encouraging to law enforcement agencies.

- Arizona has employed civil RICO for nearly a dozen years. From 1989 through 1991 Arizona's civil RICO unit netted forfeitures of \$3.7 million, more than three times the unit's budget for that period. The Arizona unit concludes that "drug organizations are unable to withstand a proper civil RICO prosecution. All target enterprises have been scattered."
- The Colorado civil RICO unit—composed of one attorney and one investigator—collected forfeitures

valued at nearly \$500,000 during its first 2 years of operation, primarily from narcotics traffickers. It is now handling more complex money laundering cases as well.

- Oregon's civil RICO unit—with one attorney and one investigator—gained forfeiture and civil penalty judgments in excess of \$2 million against 6 defendants, disrupted 11 drug trafficking enterprises, and has 7 more cases pending.
- Washington's RICO unit has collected forfeitures of close to \$500,000 to date and has four actions pending that could cost drug enterprises well over \$1 million in civil penalties and forfeitures.

In addition to stripping assets from drug and other criminal enterprises—and depositing those funds in the State treasury or designating them expressly for law enforcement—the civil RICO units in the States have, through case work, education, and training programs, developed increasingly strong links between State attorneys general and cooperating local law enforcement agencies. By developing ongoing working relations and trust with local law enforcement officials, the quantity and quality of cases referred to the units have steadily improved.

APPENDIX A

MODEL STATE RICO STATUTE

Section 1. Title

This Act shall be known as the Criminal Profiteering and Corrupt Organizations Act of 199[], and cited as [insert appropriate reference].

Section 2. Purpose

The purpose of this Act is to curtail organized, on-going criminal activity, remedy its economic effects, lessen its economic and political power in the [insert appropriate reference] by establishing new penal prohibitions and providing to law enforcement agencies and the victims of criminal activity new civil sanctions and remedies.

Section 3. Construction

The provisions of this Act shall be liberally construed to achieve their remedial purposes.

Section 4. Definitions

As used in this statute, unless the context requires otherwise:

- (a) "Criminal profiteering activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, facilitating, coercing, or intimidating another person to engage in any offense that is chargeable or indictable under the laws of the State in which the act occurred and, if the act occurred in a State other than this State, would be chargeable or indictable under the laws of this State had the act occurred in this State, and punishable by imprisonment for more than one year, regardless of whether the act is charged and indicted, as any of the following: [Insert appropriate State law offenses¹]; and any conduct defined as "racketeering activity" under 18 U.S.C. §1961; but criminal profiteering activity does not include participation in, or the organization of support of, any nonviolent demonstration, assembly, protest, rally, or similar form of public speech.
- (b) "Person" means any individual or entity holding or capable of holding a legal or beneficial interest in

property, including State and other governmental entities.

- (c) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, trust, or other legal entity, or any union, association, or group of persons, associated in fact although not a legal entity, and includes illicit as well as licit enterprises and governmental entities.
- (d) "Pattern of criminal profiteering activity" means two or more acts
- (1) That:
- (i) constitute criminal profiteering activity;
 - (ii) are related to the affairs of the enterprise;
 - (iii) are not isolated; and
 - (iv) are not so closely related to each other and connected in point of time and place that they constitute a single event; and
- (2) Where:
- (i) at least one of the acts occurred after the effective date of this Act; and
 - (ii) the last of the acts occurred within [insert period of general criminal statute of limitations] excluding any period of imprisonment after the commission of a prior act of criminal profiteering activity.

¹ The following nonexhaustive list includes predicate criminal acts under various State RICO laws: homicide, assault, robbery, kidnapping, forgery, counterfeiting, theft, embezzlement, illegal kickbacks, election offenses, wrongful influence of a public servant, official misconduct, bribery, sports bribery, gambling, usury, loan sharking, coercion, extortion, extortionate extensions of credit, gaming law offenses, credit card crimes, drug trafficking, obstructing justice, perjury, jury and witness tampering, fraud, deceptive business practices, tax offenses, money laundering, and environmental crimes.

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- (e) "Investigative agency" means the State Attorney General or any district (or county, State's, commonwealth's, or prosecuting) attorney.
 - (f) "Documentary material" includes any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

Section 5. Violations

- (a) It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of criminal profiteering activity to use or invest, directly or indirectly, any part of such proceeds, or any proceeds derived from the investment or use of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or operation of any enterprise.
- (b) It is unlawful for any person, through a pattern of criminal profiteering activity, to acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.
- (c) It is unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, the enterprise's affairs through a pattern of criminal profiteering activity.
- (d) It is unlawful for any person to conspire or attempt to violate, either directly or through others, or to solicit or facilitate the violation of the provisions of this Section.

Section 6. Criminal Penalties

- (a) Any person convicted of conduct constituting a violation of any provision of Section 5 shall be guilty of [insert appropriate reference].
- (b) In lieu of the fine authorized by Section 6(a), any person convicted of conduct constituting a violation of any provision of Section 5, through which he or she derived pecuniary value, or by which he or she caused property damage or other loss or personal injury, not including pain and suffering, may be sentenced to pay a fine that does not exceed three times the gross gain or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and

prosecution reasonably incurred, less the value of any property ordered forfeited under Section 6(c). The [insert appropriate court] shall hold a hearing to determine the amount of the fine authorized by this Subsection.

- (c) Any person convicted of conduct constituting a violation of any of the provisions of Section 5 shall forfeit, according to the provisions and procedures established in [insert appropriate statutory reference], all property described in [insert appropriate statutory reference].
- (d) Criminal penalties and fines under this Section are supplemental and not mutually exclusive, except where so designated, and shall not preclude the application of any other criminal or civil remedy under this Act or under any other provision of law.

Section 7. Civil Remedies

- (a) Any person who directly or indirectly sustains injury to his person, business or property by a pattern of criminal profiteering activity may file an action in [insert appropriate court] for the recovery of three times the actual damages proved and the costs of the suit, including reasonable attorneys' fees.
- (b) The Attorney General of the State may file an action on behalf of those persons injured, or on behalf of the State to prevent, restrain, or remedy a pattern of criminal profiteering activity as defined in this Act. In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damages in other civil cases, except that no showing of special or irreparable damage to the person need be made.
- (c) Any aggrieved person may institute a proceeding to prevent, restrain, or remedy a pattern of criminal profiteering activity as defined in this Act. In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damages in other civil cases, except that no showing of special or irreparable damage to the person need be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(d) The [insert appropriate court], after making due provision for the rights of innocent persons, has jurisdiction to prevent, restrain, or remedy criminal profiteering activity as defined in Section 4 or violations established in Section 5 by issuing appropriate orders. Prior to a determination of liability, such orders may include, but are not limited to, entering restraining orders or injunctions, requiring the execution of satisfactory performance bonds, creating receiverships and enforcing constructive trusts, in connection with any property or interest subject to damages, forfeiture or other remedies or restraints pursuant to this Act.

(e) Following a determination of liability by a preponderance of the evidence standard, such orders may include but are not limited to:

- (1) Ordering any defendant to divest himself of any interest in any enterprise or in any real property;
- (2) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of Section 5;
- (3) Ordering the dissolution or reorganization of any enterprise;
- (4) In an action by the Attorney General, ordering the payment of a civil penalty not to exceed [insert dollar amount] and the payment of all costs and expenses of the investigation and prosecution, including reasonable attorneys' fees incurred.
- (5) To the extent not already ordered to be paid in other damages, in an action by the Attorney General, forfeiture of any property or interest in property, real or personal, used in the course of, derived from or realized through conduct in violation of Section 5, first as restitution to any person damaged by an act of criminal profiteering activity, then to [insert either the State general fund or, where appropriate, the Criminal Profiteering Activity Investigation and Prosecution Revolving Fund].
- (6) Ordering payment to persons, including the State and other governmental entities, injured in their business or property by reason of a violation of Section 5 of three times their

actual damages, and the costs of suit, including reasonable attorneys' fees.

- (f) A final judgment or decree rendered against the defendant in any civil or criminal action under this Act shall estop the defendant in any subsequent civil action brought by any person as to all matters as to which the judgment or decree would be an estoppel as between the parties to the civil or criminal action.
- (g) Notwithstanding any other provision of law, a civil action under this Act may be commenced within four years after the cause of action accrues.

Section 8. Criminal Profiteering Activity Investigation and Prosecution Revolving Fund [Optional provision]

- (a) There is established a Criminal Profiteering Activity Investigation and Prosecution Revolving Fund ("Revolving Fund") to be administered by the Attorney General under the conditions and for the purposes provided by this Section. Moneys in the fund are exempt from reversion to the general fund at the end of the fiscal year.
- (b) Any prosecution and investigation costs, including attorneys' fees, recovered for the State by the Attorney General as a result of enforcement of civil or criminal statutes pertaining to any offense included in the definition of criminal profiteering activity in Section 4, or for a violation of Section 5, whether by final judgment, settlement, or otherwise, shall be deposited in the Revolving Fund.
- (c) Any moneys obtained as a result of a forfeiture by the Attorney General under this Act shall be deposited in the Revolving Fund. Any moneys or other property obtained as a result of a forfeiture by any other agency of this State, a political subdivision of this State, or the Federal Government may be deposited in the Revolving Fund for the benefit of the agency or agencies responsible for the enforcement action to the extent of their contribution.
- (d) The moneys in the Revolving Fund shall be used by the Attorney General for the investigation and prosecution of any offense within the jurisdiction of the Attorney General included in the definition of criminal profiteering activity in Section 4 or offenses prohibited by Section 5, including civil enforcement. Moneys in excess of (insert amount) shall be returned to the General Fund.

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- (e) On or before the fifteenth day of January, April, July, and October, the Attorney General shall cause to be filed with the Governor, with copies to the [insert title of director of State department of administration], the President of the Senate and the Speaker of the House of Representatives [House of Delegates, etc.], a full and complete public account of the specific receipts and disbursements from the Revolving Fund in the previous calendar quarter.

Section 9. Lien notice and lis pendens

- (a) Upon the institution of any criminal or civil proceeding or action under this Act, the [insert appropriate law enforcement agency] then or at any time during the pendency of the proceeding, may file in the official records of any one or more [insert appropriate reference] of the State a criminal profiteering activity lien notice. No filing fee or other charge shall be required as a condition for filing the criminal profiteering activity lien notice, and the clerk of the [insert appropriate agency or court] shall, upon the presentation of a criminal profiteering activity lien notice, immediately record it in the official records.

- (b) The criminal profiteering activity lien notice shall be signed by the [insert appropriate law enforcement authority]. The notice shall be in such form as the Attorney General prescribes and shall set forth the following information:
- (1) The name of the person against whom the criminal or civil proceeding or action has been brought. In its discretion, the [insert appropriate law enforcement authority] may also name in the criminal profiteering activity lien notice any other aliases, names, or fictitious names under which the person may be known. In his discretion, the [insert appropriate law enforcement authority] may also name in the criminal profiteering activity lien notice any corporation, partnership or other entity that is either controlled by or entirely owned by the person;
 - (2) If known to the [insert appropriate law enforcement authority], the present residence and business addresses of the person named in the criminal profiteering activity lien notice and of the other names set forth in the criminal profiteering activity lien notice;
 - (3) A reference to the criminal or civil proceeding or action stating that a proceeding under this

Act has been brought against the person named in the criminal profiteering activity lien notice, the name of the [insert appropriate reference] where the proceeding or action has been brought, and, if known to the [insert appropriate law enforcement authority] at the time of filing the criminal profiteering activity lien notice, the case number of the proceeding or action;

- (4) A statement that the notice is being filed pursuant to this Act; and
- (5) The name and address of the [insert appropriate law enforcement authority] filing the criminal profiteering activity lien notice and the name of the individual signing the criminal profiteering activity lien notice.

A criminal profiteering activity lien notice shall apply only to one person and, to the extent applicable, any aliases, fictitious names, or other names, including names of corporations, partnerships, or other entities, to the extent permitted in this paragraph. A separate criminal profiteering activity lien notice shall be filed for any other person against whom the [insert appropriate law enforcement authority] desires to file a criminal profiteering activity lien notice under this Section.

- (c) The [insert appropriate law enforcement authority] shall, as soon as practicable after the filing of each criminal profiteering activity lien notice, furnish to the person named in the notice by certified mail, return receipt requested, to the last known business or residential address, either a copy of the recorded notice or a copy of the notice with a notation on it of the [insert appropriate reference] in which the notice has been recorded. The failure of the [insert appropriate law enforcement authority] to furnish a copy of the notice under this Section shall not invalidate or otherwise affect the notice.
- (d) The filing of the criminal profiteering activity lien notice creates, from the time of its filing, a lien in favor of the [insert appropriate reference] on the following property of the person named in the notice and against any other names set forth in the notice:
 - (1) Any property situated in the [insert appropriate reference] where the notice is filed then or thereafter owned by the person or under any of the names; and

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- (2) Any beneficial interest in it located in the [insert appropriate reference] where the notice is filed then or thereafter owned by the person or under any of the names.

The lien shall commence and attach as of the time of filing of the criminal profiteering activity lien notice and shall continue thereafter until expiration, termination, or release. The lien created in favor of the [insert appropriate reference] shall be superior and prior to the interest of any other person in the property or beneficial interest in it, if the interest is acquired subsequent to the filing of the notice.

(e) In conjunction with any proceeding or action pursuant to this Act:

- (1) The [insert appropriate law enforcement authority] may file without prior court order in any [insert appropriate reference] a notice of lis pendens under the provision of [insert general cross reference] and, in such case, any person acquiring an interest in the real property or beneficial interest in it, if the real property or a beneficial interest in it is acquired subsequent to the filing of the lis pendens, shall take the interest subject to the proceeding or action and any subsequent judgment of forfeiture; and
- (2) If a criminal profiteering activity lien notice has been filed, the [insert appropriate law enforcement authority] may name as defendants, in addition to the person named in the notice, any person acquiring an interest in the personal or real property, or beneficial interest in it subsequent to the filing of the notice. If a judgment of forfeiture is entered in the proceeding or action in favor of the [insert appropriate reference], the interest of any person in the property that was acquired subsequent to the filing of the notice and judgment of forfeiture shall be subject to the notice and judgment of forfeiture.

(f) A trustee (or mortgagee) who acquires actual knowledge that a criminal profiteering activity lien notice, a notice of pending forfeiture, a civil proceeding or action or a criminal proceeding has been filed against any person for whom he holds legal or record title to personal or real property, shall immediately furnish to the [insert appropriate law enforcement authority] the following:

- (1) The name and address of the person, as known to the trustee;
- (2) The name and address, as known to the trustee, of all other persons for whose benefit the trustee holds title to the personal or real property; and
- (3) If requested by the [insert appropriate law enforcement agency], a copy of the trust agreement (or mortgage) or other instrument, if any, under which the trustee holds legal or record title to the property. Any trustee who fails to comply with the provisions of this Subsection is guilty of [insert appropriate criminal classification].

(g) Any trustee who transfers or conveys title to property for which a criminal profiteering activity lien notice or notice of pending forfeiture has been filed at the time of the transfer or conveyance in the [insert appropriate reference] where the property is located naming a person who holds a beneficial interest in it, shall, if he has actual notice of the criminal profiteering activity lien notice or notice of pending forfeiture, be liable to the [insert appropriate law enforcement authority] for the greater of:

- (1) The sum of the amount of proceeds received directly by the person named in the criminal profiteering activity lien notice or notice of pending forfeiture as a result of the transfer or conveyance; and the amount of proceeds received by the trustee as a result of the transfer or conveyance and distributed to the person named in the criminal profiteering activity lien notice or notice of pending forfeiture; or
- (2) The fair market value of the interest of the person named in the criminal profiteering activity lien notice or notice of pending forfeiture in the personal or real property conveyed; but if the trustee transfers or conveys the property for at least its fair market value and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or his or her designee, the trustee's liability shall not exceed the amount of the proceeds so held for so long as the proceeds are held by the trustee.

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- (h) The filing of the criminal profiteering activity lien notice shall not constitute a lien on the record title to property as owned by the trustee, except to the extent the trustee is named in the criminal profiteering activity lien notice. The Attorney General may bring a civil proceeding in any [insert appropriate court] against the trustee to recover from the trustee the amounts set forth in this Subsection (f), and the [insert appropriate law enforcement authority] shall also be entitled to recover investigative costs and attorneys' fees incurred by the [insert appropriate law enforcement authority].
- (i) The filing of a criminal profiteering activity lien notice shall not affect the use to which property or an interest in it owned by the person named in the criminal profiteering activity lien may be put or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership, but not the sale, of the property, until a judgment is entered.
- (j) (1) The provisions of this Section shall not apply to any transfer or conveyance by a trustee under a court order, unless the court order is entered in an action between the trustee and the beneficiary.
- (2) Unless the trustee has actual knowledge that a person owning a beneficial interest in the trust is named in a criminal profiteering activity lien notice or is otherwise a defendant in a civil proceeding or action, this Section shall not apply to:
- (i) any conveyance by a trustee required under the terms of any trust agreement, where the trust agreement is a matter of public record prior to the filing of any criminal profiteering activity lien notice; or
- (ii) any transfer or conveyance by a trustee to all of the persons who own a beneficial interest in the trust.
- (k) The term of a criminal profiteering activity lien notice shall be for a period of 6 years from the date of filing unless a renewal criminal lien notice has been filed by the [insert appropriate law enforcement authority] and, in such case, the term of the renewal lien notice shall be for a period of six years from the date of this filing. The [insert appropriate law enforcement authority] shall be entitled to only one renewal of the criminal profiteering activity lien notice.
- (l) The [insert appropriate law enforcement authority] filing the criminal profiteering activity lien notice may release in whole or in part any criminal profiteering activity lien notice or may release any property or interest in it from the criminal profiteering activity lien notice upon such terms and conditions as he may determine. Any release of a criminal profiteering activity lien notice executed by the [insert appropriate law enforcement authority] may be filed in the official records of any [insert appropriate agency or court]. No charge or fee shall be imposed for the filing of any release of a criminal profiteering activity lien notice.
- (m) If no civil proceeding or action has been instituted by the [insert appropriate law enforcement authority] seeking a judgment affecting any property owned by the person named in the criminal activity lien notice, the acquittal in the criminal proceeding of the person named in the criminal profiteering activity lien notice or the final dismissal of the criminal proceeding shall terminate the criminal profiteering activity lien notice and, in such case, the filing of the criminal profiteering activity lien notice shall have no effect. If a civil proceeding has been instituted, in the event the criminal proceeding has been dismissed or the person named in the criminal profiteering activity lien notice has been acquitted in the criminal proceeding, the criminal profiteering activity lien notice shall continue for the duration of the civil proceeding.
- (n) If no criminal or civil proceeding or action under this Act is then pending against the person named in a criminal profiteering activity lien notice, any person named in a criminal profiteering activity lien notice may institute an action against the [insert appropriate law enforcement authority] filing the notice, in the [insert appropriate reference] where the notice has been filed, seeking a release or extinguishment of the notice, and in such cases:
- (1) The [insert appropriate court] shall, upon the motion of the person, immediately enter an order setting a date for hearing, which date shall be not less than five (5) nor more than fifteen (15) days after service upon the [insert appropriate law enforcement authority], and the order along with a copy of the complaint shall be served on the [insert appropriate law enforcement authority] within three (3) days after the institution of the suit. At the hearing,
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the [insert appropriate court] shall take evidence on the issue of whether any property or interest in it held by such person is covered by the criminal profiteering activity lien notice or otherwise is subject to forfeiture under this Act, and, if such person shows by the preponderance of the evidence that the criminal profiteering activity lien notice is not applicable to him or that any property or interest in it held by him is not subject to forfeiture under this Act, the [insert appropriate court] shall enter a judgment extinguishing the criminal profiteering activity lien notice or releasing the property or interest in it from the criminal profiteering activity lien notice.

- (2) The [insert appropriate court] may enter its order releasing from the criminal profiteering activity lien notice any specific property or interest in it, if a bona fide sale of the property or interest in it is pending and the filing of the notice prevents the sale of the property of interest, but the proceeds resulting from the sale of the property or interest in it shall be deposited into the registry of the [insert appropriate court], subject to the further order of the [insert appropriate court]; and
 - (3) At the hearing set forth in Paragraph (1), the [insert appropriate court] may release from the criminal profiteering activity lien notice any property or interest in it upon the posting by such person of such security as is equal to the value of the property or interest in it held by such person.
- (o) In the event a civil proceeding is pending against a person named in a criminal profiteering activity lien notice, the [insert appropriate court] upon motion by the person may grant the relief set forth in this Section.

Section 10. Investigation by the Attorney General

- (a) Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary materials relevant to a violation of Section 5 or criminal profiteering defined in Section 4(a), he or she may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative

demand requiring such person to produce such material for examination.

- (b) Each such demand shall:
 - (1) State the nature of the conduct constituting the alleged criminal profiteering activity which is under investigation and the provision of law applicable thereto;
 - (2) Describe the class or classes of documentary material demanded thereunder with such definiteness and certainty as to permit such material to be fairly identified;
 - (3) State that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction;
 - (4) Identify the custodian to whom such material shall be made available; and
 - (5) Advise in writing the person upon whom the demand is served that material or statements may constitute a basis for prosecution against him or her, that he or she has the right to discuss the demand with legal counsel prior to responding, and that he or she has the right to petition a court any time prior to the response date specified to modify or set aside the demand pursuant to the terms of this Section.
- (c) No such demand shall:
 - (1) Contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the [insert appropriate reference] in aid of a grand jury investigation of such alleged criminal profiteering activity; or
 - (2) Require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of [insert appropriate reference] in aid of a grand jury investigation of such alleged criminal profiteering activity.
- (d) Service of such demand or any petition filed under this Section may be made upon a person by:
 - (1) Delivering a duly executed copy thereof to any partner, executive officer, managing

agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person or upon any individual person;

- (2) Delivering a duly executed copy thereof to the residence, principal office, or place of business of the person to be served; or
 - (3) Depositing such copy in the United States mail, by registered or certified mail, duly addressed to such person at his or her residence, principal office, or place of business.
- (e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.
- (f) (1) The Attorney General shall designate an investigator to serve as criminal profiteering activity document custodian, and such criminal profiteering activity investigators as he or she shall determine to be necessary to serve as deputies to such officer.
- (2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing, or as the court may direct, pursuant to this section, on the return date specified in such demand or on such later date as such custodian may prescribe in writing. Such person may, upon written agreement between such person and the custodian, substitute for copies of all or any part of such material originals thereof.
 - (3) The custodian to whom any documentary material is so delivered shall take physical possession thereof and shall be responsible for the use made thereof and for the return thereof pursuant to this article. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material, while in the possession of the custodian, shall be available for examination by the person who produced such material or any duly authorized representatives of such person.
- (4) Whenever any attorney has been designated to appear on behalf of the [insert appropriate reference] before any court or grand jury in any case or proceeding involving any alleged violation of this Act, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the [insert appropriate reference]. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.
 - (5) Upon completion of the criminal profiteering activity investigation for which any documentary material was produced under this Section, or in any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this Subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.
 - (6) When any documentary material has been produced by any person under this Section for use in any criminal profiteering activity investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this Subsection so produced by such person.
 - (7) In the event of the death, disability, or separation from service of the custodian of any

documentary material produced under any demand issued under this Section, or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly designate another criminal profiteering activity investigator to serve as custodian thereof and transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated. Any successor so designated shall have with regard to such material all duties and responsibilities imposed by this Section upon his predecessor in office with regard thereto; except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

- (g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this Section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the [insert appropriate court] of the [insert appropriate reference] for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for any order of such court for the enforcement of this Section.
- (h) Within twenty (20) days after the service of any such demand upon any person, or at any time before the return date specified in the demand,

whichever period is shorter, such person may file, in the [insert appropriate court] of the [insert appropriate reference] for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief and may be based upon any failure of such demand to comply with the provisions of this Section or upon any constitutional or other legal right or privilege of such persons.

- (i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with such demand, such person may file, in the [insert appropriate court] of the [insert appropriate reference] for the judicial district with which the office of such custodian instituted, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this Section.
- (j) Whenever any petition is filed in any [insert appropriate court] of the [insert appropriate reference] under this Section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect the provisions of this Section.

APPENDIX B

STATE CIVIL RICO FORFEITURES AND DAMAGES*

Thirty States and territories have statutes patterned to some extent after the RICO statute, 18 U.S.C. §§ 1961–1968. Typically these statutes provide enhanced criminal penalties and civil remedies, including forfeiture, for the commission of a “pattern of racketeering activity” in conjunction with an “enterprise.” (The Arizona, Hawaii, and Rhode Island statutes do not require a “pattern”—only an act of “racketeering.” Some statutes, like Arizona’s, do not require the “enterprise” element in all cases.) The racketeering acts giving rise to a RICO action vary from State to State, but many State statutes incorporate all of the racketeering acts enumerated in Federal RICO, and additional State law violations as well.

The most active States in employing civil RICO have been Arizona, Colorado, Florida, Oregon, and Washington.

A number of States that do not have broad State civil RICO statutes, e.g. Alabama, Illinois, New York, and West Virginia, nonetheless use Federal civil RICO in actions to remedy harm caused directly to the States.

ARIZONA

Ariz. Rev. Stat. Ann., §§ 13–2301—13–2317.

Civil forfeiture; triple damages & attorneys’ fees

The Arizona statute is used in all civil forfeiture cases since there is no requirement of showing a “pattern of racketeering,” only an act of racketeering that gives rise to forfeiture. The Arizona attorney general uses its RICO statute extensively, having dedicated staff personnel in both the Financial Fraud Unit (the location of a civil RICO demonstration site) and the Racketeering Section. The State RICO statute is used extensively in drug and fraud cases, and has been the vehicle through which tens of million of dollars worth of assets have been forfeited.

*Most statutes provide for extensive equitable relief, including dissolution, divestiture, reorganization, charter revocation, etc., in addition to the legal relief provided.

CALIFORNIA

Cal. Penal Code, § 186—186.8.

The California statute is not used for civil actions.

COLORADO

Colo. Rev. Stat., §§ 18–17–101—17–17–109.

Civil forfeiture; triple damages & attorneys’ fees

The Colorado RICO statute is used frequently in forfeiture cases in conjunction with Public Nuisance statutes: Unlike Nuisance statutes, State RICO doesn’t require dollar-for-dollar tracing, so it is preferable in going after proceeds of criminal activity. However, RICO forfeitures go to the State general fund, whereas Nuisance forfeitures are more easily directed exclusively for law enforcement. Colorado uses the RICO statute in drug and fraud cases. The State attorney general’s office has been a civil RICO demonstration site and has staff personnel devoted to civil RICO cases.

CONNECTICUT

Conn. Gen. Stat., § 53–393—53–403.

Criminal forfeiture

The State does not have State civil RICO authorization.

DELAWARE

Del. Code Ann., Title 11 §§ 1501—1511.

Civil forfeiture; triple damages, punitives, and attorneys’ fees; \$100,000 civil penalty.

The State civil RICO statute has been used to forfeit assets of a cocaine-trafficking enterprise.

FLORIDA

Fla. Stat., §§ 895.01—895.09.

Civil forfeiture; triple damages for injury to State & attorneys’ fees.

The Florida RICO statute is used extensively (e.g., six actions in 1990 involving million of dollars

of seizures), and there is a devoted civil RICO staff. Drug forfeitures under the civil RICO statute have resulted, among other things, in preservation of environmentally sensitive lands in the Florida Keys. The RICO statute is also used in gambling, loan sharking, and extortion cases.

GEORGIA

Ga. Code Ann., §§ 16-14-1—16-14-15.

Civil forfeiture; triple damages & attorneys' fees.

The Georgia RICO statute has been used increasingly in multidistrict drug cases by district attorneys. In one recent case, a civil RICO consent order resulted in forfeiture of a junkyard used to fence stolen property and distribute illegal drugs.

HAWAII

Hawaii Rev. Stat., Title 38, 1842-1—842-12.

Actual damages & attorneys' fees.

While the State attorney general is active in forfeitures, most are not pursuant to the State RICO statute.

IDAHO

Idaho Code, §§ 18-7801—18-7805.

Triple damages & attorneys' fees.

Since 1990, the State attorney general's office has had a devoted Racketeering Unit that works in conjunction with the Civil Drug Asset Forfeiture Unit. The Racketeering Unit assists local prosecutions under the State RICO statute and handles cases itself, including one against a large marijuana growing operation.

ILLINOIS

Ill. Ann. Statutes, Ch. 56-1/2, ¶ 1651.

Triple damages & attorneys' fees, but limited to a narrow range of racketeering acts.

The State RICO is used most in criminal drug trafficking prosecutions.

INDIANA

Ind. Code, §§ at 35-45-6-2.

Civil forfeiture for injury to State; triple damages, punitives.

The State RICO is used by district attorneys mostly in obscenity prosecutions.

LOUISIANA

Louisiana Rev. Stat., §§ 15-1351—1356.

In rem civil forfeiture for injury to State, larger of triple damages, punitives, or \$10,000 fine & attorneys' fees for injury to State.

Although district attorneys mostly employ drug forfeiture statutes, the new attorney general has indicated an increasing interest in civil RICO.

MINNESOTA

Minn. Stat. Ch. 609.901—609.912.

Civil penalty up to \$1,000,000 & attorneys' fees.

The State RICO statute is not as yet broadly employed.

MISSISSIPPI

Miss. Code Ann., §§ 97-43-1—97-43-11.

Civil forfeiture; triple damages & attorneys' fees.

The Mississippi attorney general has shown substantial interest in State civil RICO, sponsoring a conference on the subject. Nonetheless, most forfeitures are not pursuant to RICO.

NEVADA

Nev. Rev. Stat., Title 16, §§ 207.350—207.520.

Civil forfeiture; triple damages.

The State civil RICO is used sporadically in drug cases.

NEW JERSEY

N.J. Laws Criminal, 2C:41-1—2C:41-6.

Civil forfeiture; triple damages & attorneys' fees.

The attorney general's office historically has had a dedicated RICO Unit but recently has more frequently used civil forfeiture and conversion statutes in drug cases.

NEW MEXICO

N.M. Stat. Ann., §§ 30-42-1—30-42-6.

Triple damages & attorneys' fees.

New Mexico has sporadically employed State RICO in fraud cases.

NEW YORK

N.Y. Penal Law, Title 10, §§ 460.00—460.80.

Criminal forfeiture.

New York has employed Federal civil RICO in waste-hauling fraud cases.

NORTH CAROLINA

N.C. Gen. Stat., §§ 75D-1—75D-14.

Triple damages and civil forfeitures.

In 1990, eight civil RICO actions were brought by the attorney general's office against drug traffickers.

NORTH DAKOTA

N.D. Cent. Code, §§ 12.1-06.1-01—12.1-06.1-08.

Civil forfeiture; triple damages & attorneys' fees.

North Dakota does not have much experience in using its State RICO to date.

OHIO

Ohio Laws §§ 2931.31—2931.36.

Triple damages for injury to State & attorneys' fees.

There is an increasing interest in the State RICO, reflected in the attorney general's sponsorship of a conference on the subject in June 1992. Ohio has employed criminal RICO to gain drug forfeiture.

OKLAHOMA

Okla. Stat., Title 22, §§ 1401-1419.

Civil penalty up to \$100,000.

Several criminal RICO drug prosecutions have been successfully brought.

OREGON

OR. Rev. Stat., §§ 166.715—166.735.

Civil forfeiture; triple damages, punitives, civil penalty up to \$250,000 & attorneys' fees.

The Oregon attorney general's office has had a dedicated civil RICO unit and civil RICO demonstration site for several years. The State RICO statute is broadly employed in drug and fraud cases, particularly to establish personal jurisdiction to forfeit extraterritorial property.

PENNSYLVANIA

Pa. Cons. Stat. Ann., Title 18, §§ 911(a)—911(h).

Divest interest in enterprise.

The State uses civil forfeiture statutes in drug cases.

RHODE ISLAND

R.I. Gen. Laws, §§ 7-15-1—7-15-11.

Triple damages & attorneys' fees; criminal forfeiture.

The State uses civil forfeiture laws in drug enforcement.

TENNESSEE

Tenn. Code Ann., §§ 39-12-201—39-12-209.

Civil forfeiture.

The attorney general's office has used RICO's civil forfeiture provisions in conjunction with a RICO criminal conviction for drug violations.

UTAH

Utah Code Ann., §§ 76-10-1601—76-1-1608.

Double damages & attorneys' fees.

Utah has not shown much RICO activity to date.

WASHINGTON

Wash. Rev. Code, §§ 9A.82.010—9A.82.900.

Civil forfeiture; up to triple damages, civil penalty up to \$250,000 & attorneys' fees.

The attorney general's office has been a civil RICO demonstration site and has devoted staff personnel to civil RICO enforcement, resulting in a number of civil RICO drug cases and hundreds of thousands of dollars in forfeitures in the last few years.

WISCONSIN

Wis. Stat., §§ 946.80—946.87.

Civil forfeiture; double damages, punitives & attorneys' fees.

The RICO statute has been seldom employed to date.

PUERTO RICO

P.R. Laws Ann., Title 25, Ch. 94B, §§ 971—971p.

Attorneys' fees.

Puerto Rico's RICO statute has been seldom employed to date.

VIRGIN ISLANDS

V.I. Code, 14 VIC, § 607.

Monetary and injunctive relief.

The Virgin Islands statute has not been used to date since all predicate acts alleged must have occurred after its effective date of November 9, 1990.

APPENDIX C

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Smith, David B. and T.G. Reed (1987). *Civil RICO*. New York/Oakland/Albany: Matthew Bender (annually updated).

Reporter Services

Civil RICO Report (weekly: case summaries).

Contact: Civil RICO Report

1350 Connecticut Avenue NW., Suite 1000
Washington, DC 20036
Telephone: (202) 862-0990.

RICO Law Reporter (monthly: full-text case and document service, case summaries, analysis).

Contact: Computer Law Reporter

1519 Connecticut Avenue NW., Suite 200
Washington, DC 20036
Telephone: (202) 462-5755.

Publications of the National Association of Attorneys General (NAAG)

Goldsmith, Michael (1991). *Establishing a Civil RICO Unit Within the Office of the Attorney General*.

Holmes, Cameron H. (1990). *Drafting a State Civil RICO Statute: A Comparative Analysis of Five Statutes*.

Murray, Frank L. (1992). *Prosecuting a Civil RICO Case*.

Swan, Thomas T. (1988). *The Use of Civil RICO in Drug Enforcement: Analysis and Case Study*.

Civil Remedies in Drug Enforcement Report (bimonthly newsletter of analysis and case summaries).

Civil RICO Pleading Manual (updated annually).

Training and Technical Assistance

NAAG offers a variety of products and services to assist and enhance the civil RICO work of State attorneys general. NAAG's Civil RICO Technical Assistance Project does the following:

- Conducts regular training conferences in the application of civil RICO and related civil remedies for State attorneys general and their staffs.

- Maintains a clearinghouse of pleadings and RICO documents available upon request to State attorneys general.

- Annually updates *Civil RICO Pleading Manual* and *Civil RICO Pleading Index* and distributes them to all attorneys general and designated staff.

- Distributes information on and provides training in the use of a computerized "hypertext" outline of the Federal RICO statute and case law that enables RICO novices, using computer software, to understand, research, and apply RICO's novel elements quickly. The software is designed so that users can customize it to include State RICO statutes and case law as well.

- Disseminates a monograph series on civil RICO-specific topics, including using civil RICO in drug enforcement; drafting a State civil RICO statute; establishing a civil RICO unit within the office of the attorney general; and prosecuting a civil RICO case.

- Publishes a highly regarded bimonthly newsletter, *Civil Remedies in Drug Enforcement Report*.

In addition, the project director and experienced representatives from Civil RICO Demonstration Projects are available to provide onsite technical assistance to States seeking assistance in drafting and applying civil RICO statutes. Contact: National Association of Attorneys General, Director and Chief Counsel, Financial Crimes and Racketeering Project, 444 North Capitol Street NW., Washington, DC 20001, telephone: (202) 434-8060; Oregon Office of Attorney General, Financial Fraud Division, 100 Justice Building, Salem, OR 97310, telephone: (503) 378-4732; Arizona Office of Attorney General, Financial Remedies Unit, 1275 West Washington, Phoenix, AZ 85007, telephone: (602) 542-1275.

The Bureau of Justice Assistance provides grant support and program planning assistance in support of State civil RICO programs. For additional information, contact the U.S. Department of Justice, Bureau of Justice Assistance, Prosecution Branch, 633 Indiana Avenue NW., Washington, DC 20531, telephone: (202) 514-5947.