

# CIVIL ASSET FORFEITURE

## **THE PROBLEM**

Under civil asset forfeiture practices, local law enforcement can seize citizens' homes, cars, cash, and other property if they merely suspect that the property concerned is in any way connected to a crime or criminal activity, creating a perverse incentive for law enforcement officers. Asset forfeiture laws vary state by state<sup>1</sup>, and in most states, law enforcement is allowed to keep a large portion, or all, of the forfeited property. One way in which they can do this is by participating in the "Equitable Sharing Program" designed by the federal Department of Justice. This is a legal loophole that gives state and local law enforcement the option of prosecuting some asset forfeiture cases under federal law and allows local law enforcement departments to keep up to 80 percent of seized property.<sup>2</sup>

Evidentiary standards for acquiring property are low, allowing law enforcement to seize and withhold property without necessarily proving any absolute connections between the property and the crime in question. Asset forfeiture laws provide local law enforcement with financial incentive to take advantage of people and "police for profit," padding their department budgets with capital taken from, often innocent, individuals.<sup>3</sup> This process threatens citizens' constitutional rights to due process and property, and when abused by local law enforcement, undermines that law enforcement department's ability to protect and serve in their intended capacities.

Furthermore, these practices have a disproportionately negative impact on communities of color. In 2015, the Washington Post reported that Philadelphia's District Attorney's Office seized more than \$2.2 million annually. The Institute for Justice drew a parallel between the city's forfeiture policies and the practice of "stop-and-frisk," noting that both policies dispro-

tionately affect young African American and Latino men.<sup>5</sup> In 2015, African Americans made up 44 percent of Philadelphia's population, yet accounted for two-thirds of all forfeiture cases.<sup>6</sup> The intended purpose of most asset forfeiture laws is to fight large-scale drug operations and organized crime by stopping some of their cash flow. However, the ACLU found that in Philadelphia, the average amount of cash seized under civil forfeiture laws was \$192, and only 1 in 10 amounts are greater than \$1000.<sup>7</sup>

## **THE SOLUTION**

In order to prevent police from "policing for profit," states and local government must first eliminate police forces' financial incentives for civil forfeiture, and improve property rights and protections for residents. Second, law enforcement agencies must be held to a high standard of operating under a strict burden of proof to justify any acquisition and withholding of property. In 2012 the ACLU settled a class action lawsuit against **Shelby County and Tenaha** (TX) Police Department ending the "interdiction program"<sup>8</sup> in Shelby County. As a result of the settlement, Shelby County police are being held more accountable at traffic stops in Tenaha. Among the reforms following this suit, no property may be seized during a search unless the officer first gives the driver a reason for why it should be taken, and all property improperly seized must be returned within 30 business days.<sup>9</sup>

A bipartisan bill was proposed in the **Pennsylvania** State Legislature that would require all cash seized through forfeiture to go to the state's general fund rather than the District Attorney's Office. It would also require that a person be convicted of a crime before law enforcement officials could permanently keep seized property.<sup>10</sup> The bill has passed the state Senate, but with alterations

that the Pennsylvania ACLU claims “fail to reform the practice of civil asset forfeiture in any way.”<sup>11</sup> While the final legislation in Pennsylvania may not be ideal, the language in the initial bill is a model for civil asset forfeiture law reform.

In **Washington, DC**, The Civil Asset Forfeiture Amendment Act of 2014, bans adoption of seized property by the Federal Government through equitable sharing, and requires that property seized from joint task forces between local law enforcement and federal law enforcement will be directed to the city’s general fund.<sup>12</sup> This makes DC a strong, progressive model for cities. Additionally, the DOJ has made a legal requirement, with a few exceptions that local law enforcement agencies that continue to participate and profit from equitable sharing must spend the money on law enforcement purposes only. State and local governments should make it a legal requirement that any assets seized through forfeiture must be directed to the state and city general fund.

Because the delegation of civil forfeiture power to local law enforcement departments is primarily based in state law, best practice recommendations are primarily for the states.

Best practices for state and local law enforcement agencies with forfeiture powers:

- Mandate the tracking and reporting of forfeiture activity, including the type and value of property seized and every purchase made with forfeiture revenue.
- Law enforcement, operating under a strict burden of proof, should be required to demonstrate a clear and strong connection between property being seized and the criminal activity of the property owner. If they cannot demonstrate this, the property must be returned in a timely manner. Under civil forfeiture laws, there is no need for a criminal conviction in order for law enforcement to seize property.
- Citizens must be given prompt post-seizure hearings in which they are given the opportunity to ask a judge to return their property.
- Civil forfeiture revenue should flow into the city or county general fund, or another fund, such as education.
- Lawmakers must introduce legitimate protections in line with existing Constitutional securities for property owners. State and local law enforcement should have to prove that the owner consented to or had knowledge of the crime that led to the seizure of their property.

## LANDSCAPE AND RESOURCES

The **Justice Institute’s** “Policing for Profit” toolkit, published in 2015, was the main source of information for this brief. The **ACLU** has also done work on asset forfeiture.

## NOTES

- 1 The Institute for Justice, in their *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2nd ed.) toolkit, gave each state a grade on their civil forfeiture laws based on the incentives they gave to law enforcement to “police for profit” and what protections they afford to property owners. (See Endnote 4 for full citation of toolkit).
- 2 In 2015, New Mexico ended all state participation in the Equitable Sharing Program, checking New Mexico local law enforcement departments’ abilities to abuse their power. New Mexico’s progressive actions are a model for other states.
- 3 Carpenter, Ph.D., D. M., Knepper, L., Erickson, A. C., & McDonald, J. (2015). *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2nd ed.). N.p.: The Institute for Justice.
- 4 Christopher Ingraham, *How Philadelphia Seizes Millions in ‘Pocket Change’ from some of the City’s Poorest Residents*, Washington Post (2015).
- 5 Sibilla, N. (2012, November 30). Seize First, Ask Questions Later: Philadelphia Police Take Over \$6 Million a Year in Civil Asset Forfeiture. In *Institute for Justice*.
- 6 Ingraham, C. ‘Pocket Change’ The Washington Post
- 7 Ibid
- 8 Mukherjee, E. (2012, August 9). Settlement Means No More Highway Robbery in Tenaha, Texas. In *ACLU American Civil Liberties Union*.
- 9 Ibid
- 10 Otterbein, H. (2015, June 3). This Bill Would Transform Civil Asset Forfeiture in Pa. In *Philadelphia Magazine* (online).
- 11 ACLU of PA: State Senate Bill Fails to Reform Civil Asset Forfeiture,” *ACLU*, April 26, 2017.
- 12 Sibilla, N. (2014, December 3). Washington, D.C. Council Votes to Reform City’s Civil Forfeiture Laws, Ban Policing for Profit. In *Forbes*.