

CIVIL ASSET FORFEITURE

THE PROBLEM

Under civil forfeiture practices, law enforcement officers can seize and keep people’s personal property—for example, their homes, cars, and cash—based on the mere suspicion that the property is in any way connected to a crime. In many states, asset forfeiture laws enable police departments to keep the majority or entirety of the seized property, creating a perverse incentive for law enforcement to steal from innocent people.

Evidentiary standards for acquiring property are low, allowing law enforcement to seize and withhold property without necessarily producing proof of a connection between the property and crime in question. Asset forfeiture laws provide local law enforcement with financial incentive to take advantage of people and to “police for profit,” padding their department budgets with capital taken from innocent individuals.¹ This process threatens citizens’ constitutional rights to due process and property, and when abused by local law enforcement, undermines the department’s ability to protect and serve in their intended capacities. It is important to note that not all property goes through formal legal proceedings, so the full amount of property that is forfeited due to bureaucratic hurdles and lack of oversight may not be fully transparent in many jurisdictions.

One way that many local police departments benefit directly is through their participation in the “Equitable Sharing Program,” a program of the Department of Justice (DOJ).² The program creates a legal loophole for state and local law enforcement agencies by allowing them to prosecute some asset forfeiture cases under federal law and permitting local law enforcement departments to keep up to 80 percent of seized property.³ Under the Obama Administration, then-Attorney General Eric Holder announced restrictions on some federal asset forfeiture practices, but in July 2017, Attorney

General Jeff Sessions rolled back these restrictions, reviving the Equitable Sharing Program.⁴ Civil forfeiture 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.⁵ The Institute for Justice drew a parallel between the city’s forfeiture policies and the practice of “stop-and-frisk,” noting that both policies disproportionately affect young black and Latino men.⁶ In 2015, black people made up 44 percent of Philadelphia’s population, yet accounted for two-thirds of all forfeiture cases.⁷ 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 one in ten amounts are greater than \$1000.⁸

THE SOLUTION

In order to prevent police from “policing for profit,” states and local government must first eliminate the financial incentives for police forces that come with civil forfeiture and improve property rights and protections for residents. Second, law enforcement operations must be held to a high standard and 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”⁹ 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.¹⁰

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.¹¹ 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.”¹² 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) be directed to the city’s general fund.¹³ This makes D.C. a strong, progressive model for cities. Additionally, the DOJ has made a legal requirement, with few exceptions, that local law enforcement agencies continuing to participate and profit from equitable sharing must only spend the money on law enforcement purposes. State and local governments should make it a legal requirement that any assets seized through forfeiture be directed to the state and city general fund.

The **New York City Police Department (NYPD)** was forced to alter its property seizure processes after it was sued in federal court for the unconstitutional practice of retaining seized property. According to the lawsuit, the NYPD had “imposed convoluted procedures making it virtually impossible for many people to get this property back.”¹⁴ The legal office which filed the case on behalf of low-income New York City residents has stated that the NYPD agreed to “comply with clear rules regarding the seizure and return of property; provide people with notice on how to retrieve their property; train and supervise NYPD personnel concerning these mandates; conduct audits to ensure compliance; and submit to ongoing court jurisdiction.”¹⁵

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. Currently, there is no need for a criminal conviction in order for law enforcement to legally seize property.

- Citizens must be given prompt 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 public fund, such as one for 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.