



## CIVIL ASSET FORFEITURE

### HISTORY *and* BACKGROUND

**What is civil asset forfeiture?** Civil asset forfeiture is a tactic used by law enforcement to seize a person’s money, car, or other property—including bank accounts, businesses, houses, and jewelry—based simply on the suspicion that the *property* was used to commit a crime or connected to criminal activity. Property owners do not have to be charged with, let alone convicted of, any crime for law enforcement to take their property. In fact, in a shocking 80% of civil asset forfeitures, the property owner is never charged with a crime.

**Where does it come from?** This legal fiction—that property can be “guilty” of a crime and therefore forfeitable—dates back two centuries, as authorities needed a mechanism to seize boats filled with contraband when the boat owners were beyond American borders. Until the “War on Drugs,” this now-controversial law enforcement tactic was almost never used. In the 1970s, however, Congress passed legislation that allowed law enforcement to seize property and money thought to be associated with illegal drug trade. Then, in 1984, Congress passed a law allowing law enforcement agencies to retain the proceeds from successful forfeitures. Although this was intended as a tool to target drug kingpins and crime syndicates by undercutting their profits, civil asset forfeiture has expanded far beyond this narrow purpose and fundamentally altered modern day policing. For context, in 1985, the Justice Department took in \$27 million worth of forfeited proceeds. Thirty years later, in 2014, it took in \$4.5 billion in forfeited assets. The assets taken annually by local and state police departments are even higher.

**What does it look like?** The vast majority of asset forfeitures nowadays involve highway traffic stops. Police will look for rental cars or cars with out-of-state licenses and pull them over for minor traffic violations—such as changing lanes without a blinker or following too closely—then, if police determine the occupant seems “suspicious,” they will ask to search the vehicle. If a large amount of cash is found, police will seize that cash as drug-related. Most often the driver is not even issued a ticket, let alone charged, but the cash goes to the law enforcement agency that made the seizure.

### *The* PROBLEM

**“Policing for Profit”—Perverse Incentives:** The fundamental issue with civil asset forfeiture is that the agency who seizes the property gets to keep and spend the proceeds, whereas (before 1984) those proceeds went into a general fund not accessible to law enforcement. Departments now routinely seize 20% or more of their annual budgets in forfeiture proceeds—a phenomenon known as “policing for profit.” These proceeds can be in the form of cash (either directly forfeited or profits made from selling forfeited property, like a home) or vehicles, which police are entitled to use after being seized.

With asset forfeiture now commonplace, local governments routinely reduce law enforcement budgets by the amount generated in forfeiture in prior years on the expectation that the difference will be made up through civil forfeiture. This practice—known as “budget supplanting”—renders agencies dependent on asset forfeiture to fund their operations, greatly increasing the pressure to seize more. This creates a myriad of perverse incentives: in particular, the incentive to allow individuals to commit crimes so police can seize the resulting profits. For example, police are far more likely to patrol a city’s outbound lanes—where illegal drug profits are leaving the city—than the inbound lanes—where police could stop the flow of drugs into the city. Police also routinely engage in “reverse stings,” posing as drug sellers rather than buyers because buyers tend to have more cash on hand subject to forfeiture. Law enforcement will also often let go people they

know (or strongly suspect) to be involved in drug trade in exchange for them signing away their rights to any cash discovered when their vehicles are stopped.

**“Guilty Until Proven Innocent”—Lack of Procedural Protections:** In forfeiture proceedings, federal agencies (and law enforcement in most states) need only show by a “preponderance of the evidence” that the property seized had some connection to illegal activity (in some states, the standard is even lower, merely probable cause). In virtually all states, law enforcement does not have to show that the property owner had actual knowledge of any crime so long as the property was in “close proximity” to a controlled substance. To keep their property, then, owners must prove a negative: that their assets were not connected to a crime (“guilty until proven innocent”). It is extremely difficult to overcome this presumption even in front of a judge, but the odds are further stacked against property owners as most forfeiture challenges are first handled administratively—meaning the law enforcement agency that seized the assets investigates and “rules on” the challenge before it can be appealed to a judge.

Property owners are also not entitled to counsel in forfeiture proceedings, even if they are indigent. When a person cannot afford to challenge the forfeiture, the government wins by “default” and the forfeited assets go directly back into the hands of the law enforcement agency that seized them. Even when people can afford a lawyer, it often does not make financial sense to challenge the forfeiture because the attorney’s fees may be higher than the amount seized.

**Stark Racial and Class Disparities:** Black and Latinx individuals are disproportionately affected by civil asset forfeiture. Because most forfeiture actions take place at traffic stops and in highly policed, low-income neighborhoods—and those individuals are more likely to carry cash and least likely to be able to challenge the forfeitures—law enforcement is incentivized to stop more people in those communities. As one forfeiture study in South Carolina determined: “law enforcement views the simple act of being Black and in possession of cash or other valuables as indictive of criminal activity.” The following statistics are illustrative:

- A 2015 study by the ACLU of Pennsylvania found that 63% of Philadelphia cash forfeitures each year involve money taken from Black residents, who make up only 43% of the city’s population. Of those seizures, 71% had cash forfeited without being convicted of a crime. Real-estate forfeitures are also overwhelmingly from Black and Latinx residents.
- An extensive investigation into statewide forfeitures in South Carolina determined that Black men represent 65% of all citizens targeted for civil forfeitures—although they make up only 13% of the state’s population. White people are also twice as likely to get their money back.
- A 2016 study by the ACLU-NJ found that areas in NJ with greater populations of people of color tended to have higher numbers of seizures, with the largest volume of forfeiture actions happening in Hudson County—where Black people are arrested for low-level offenses at a rate 9.6 times higher than that of white people.
- In Myrtle Beach, SC, there was one Black person targeted for forfeiture for every 50 Black residents from 2014-2016. Extrapolating that over a generation, one in five Black people would have money or goods taken by police in Myrtle Beach though the City is mostly white.

**Complete Lack of Oversight and Accountability:** Virtually no state and local law enforcement agencies are required to track or report their forfeiture activities—meaning there is no transparency about how much was seized or how much was spent. Unsurprisingly, this utter lack of transparency and accountability has led to instances of corruption. For example, the former police chief of Romulus, Michigan was charged with racketeering—along with his wife and five other officers—for using forfeiture funds to purchase prostitutes and marijuana. A former sheriff in Camden County, Georgia, used forfeiture money to pay prison inmates to build himself a private weekend home and donated \$250,000 in forfeiture proceeds to his alma mater to start a scholarship in his name. In Oklahoma, two officers were indicted for allowing a suspected drug dealer to go free in exchange for \$10,000 cash discovered in his vehicle; also in Oklahoma, a district attorney ignored a court order to sell a seized home and instead lived in it rent-free for five years. Because forfeiture funds are gathered and spent in secrecy, it is impossible to know how rampant such corruption is.

## EXAMPLES *of* CIVIL ASSET FORFEITURE

These additional examples demonstrate how law enforcement abuse civil asset forfeiture. While these individuals ultimately recovered their property (often after many years), in each case it was because they received free legal representation. The vast majority of property owners never have that opportunity.

- **Margaret Davis, West Philadelphia, PA (2001):** Philadelphia police pursued suspected drug dealers through the unlocked door of 77-year-old Margaret Davis's home. Ms. Davis suffered from end-stage renal disease and used para-transit to travel to dialysis treatment three times a week. Ms. Davis permitted police to search her home after the suspects fled; unsurprisingly, police found drugs left in plain view by the fleeing suspects. The next month, the district attorney moved to seize Ms. Davis's home even though there was no indication whatsoever that she had any involvement with the drug crimes. Ms. Davis could not afford a lawyer, but two years later she won the right to keep her home with the help of a pro bono law clinic.
- **The Contemporary Art Institute of Detroit (2008):** Over 40 law enforcement officers—members of the Detroit Police Department's vice squad and mobile tactical unit—raided a monthly social event at the Institute because, according to police, the gallery lacked proper city permits for after-hours dancing and drinking. The officers demanded the keys of all attendees and seized over 40 cars as having "facilitated" the guests' attendance at the "illegal" event. Most guests had to pay over \$1000 to get their cars back; if payment was not made promptly, then their cars became city property. The proceeds were split between the prosecutors, police, and towing companies. A judge later determined the seizure was unconstitutional, though the City appealed the ruling.
- **Nelly Moreira, Washington, D.C. (2012):** Washington D.C. Metro Police pulled over Nelly Moreira's son while he was driving her car and, after a pat down, found a handgun. Moreira's son was arrested and her car was seized—even though it was in her name and she was not even present. Moreira relied on the car to get to work. Two months later, she received a letter telling her to pay a bond of \$1020; she borrowed cash from friends and family to cover the bond. If she hadn't the car would have been auctioned off or used by the police. Even after making bond, Moreira had to make car payments each month while her car sat unused in the city lot. Nearly a year later, with help from pro bono counsel, Moreira finally got her car back.
- **Russ Caswell, Tewksburg, MA (2009):** In 2009, the Tawksbury police along with the DEA sought to seize the motel built by his father and owned outright by Russ Caswell; the motel was valued at over \$1 million. Authorities never suspected Caswell of having committed a crime or even benefitted from one; instead, their rationale was that there'd been 15 drug-related arrests over a 14-year period. But Caswell had rented over 200,000 rooms in that time period and cooperated with all law enforcement activities. After several years and with the help of pro bono counsel, Caswell was able to get his motel back. A DEA agent questioned during the lawsuit admitted that he was tasked with finding properties to be forfeited—and that the agency wouldn't go over a property unless the owner had over \$50,000 in equity.

## RECOMMENDATIONS

Civil asset forfeiture is an incredibly controversial law enforcement tool with groups from the ACLU to the Koch brothers pushing for its reform. The ACLU and Drug Policy Alliance have both called for abolition. On the way to abolition, the following reforms would help to curb rampant abuses:

- Directing civil forfeiture revenues into the state general fund (or a neutral fund for community services) instead of directly into police department budgets
- Requiring a criminal conviction as a prerequisite to forfeiture
- Providing counsel for the indigent in forfeiture proceedings and raising the burden of proof to “beyond a reasonable doubt”
- Mandating that law enforcement agencies track and transparently disclose the amount and circumstances of each seizure, whether any individual was charged, and how the forfeiture funds were spent

## RESOURCES AND CITATIONS

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