
FACT SHEET: Why Civil Asset Forfeiture is Legalized Theft

Civil asset forfeiture laws allow police to seize property, money, or assets if police merely believe it is connected to criminal activity. Police do not have to file charges or even establish guilt in these cases before seizing and keeping property and there is no limit to what police can seize. In addition, these seizures often take place in instances where law enforcement have engaged in discriminatory profiling people of color and other minorities (e.g., traffic stops, airport searches, and train searches).

Federal forfeiture law provides law enforcement with a strong monetary interest in asset seizures. Under the Department of Justice's equitable sharing program, state and local law enforcement that turn over seized property to the federal government can pocket up to 80 percent of the forfeiture proceeds. Additionally, federal law does not require the collection or reporting of data on state, local, or federal seizures.

In essence, these laws amount to legalized theft and rest on a presumption of guilt that flies in the face of our longstanding principle that everyone is innocent until proven guilty.

Civil asset forfeiture laws are disproportionately harmful to lower-income communities and communities of color.

- A recent series of articles by *The Washington Post* chronicling the issue found that “of the 400 court cases examined by *The Post* where people who challenged seizures and received money back, the majority were Black, Hispanic or another minority.”¹
- Despite making up 43 percent of the city's population, 63 percent of Philadelphia cash seizures each year involve money taken from African Americans. African Americans account for 71 percent of innocent Philadelphians who have cash seized each year.²
- Asset forfeiture takes place in situations where minorities are often targeted by police because of racial profiling. According to a study by the ACLU, in “traffic stops, airport seizures, and drug arrests... minorities are hardest hit.”³

Civil asset forfeiture laws create a perverse financial incentive for federal, state, and local law enforcement to pursue profit over the fair administration of justice.

- Since the terrorist attacks of September 11, 2001, law enforcement nationwide has taken in \$2.5 billion from 61,998 cash seizures under the federal civil forfeiture program.

¹Michael Sallah, Robert O'Harrow Jr., Steven Rich, *Stop and Seize*, WASHINGTON POST, September 6, 2014, <http://www.washingtonpost.com/sf/investigative/collection/stop-and-seize-2/>.

² American Civil Liberties Union of Pennsylvania, *Guilty Property*, June 2015, http://www.aclupa.org/files/3214/3326/0426/Guilty_Property_Report_-_FINAL.pdf.

³ American Civil Liberties Union, *Letter to the House on the Civil Asset Forfeiture Act of 1999*, June 10, 1999, <https://www.aclu.org/letter/letter-house-civil-asset-forfeiture-act-1999>.

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- If local and state law enforcement collaborate with a federal agency and bypass state forfeiture laws, they can pocket up to 80 percent of the proceeds.⁴
- In 42 states, at least half of the profits from seizures – including money, jewelry, cars, homes and other seized property – go directly to law enforcement, which is often used to make up deficits in budgets or to provide for staff salary.
 - In 26 of these states, 100 percent of the profits from these seizures go to law enforcement.⁵
- As of 2003, only 29 states require law enforcement agencies to report how much money has been raised and on what items the money has been spent, making oversight of the practice difficult and abuses easier.⁶

Civil asset forfeiture laws encourage violations of Americans' right to due process.

- Under federal forfeiture law, the burden of proof strongly favors the government over property owners. Law enforcement only needs to demonstrate by a “preponderance of the evidence” that someone’s property is related to criminal conduct before seizing that property.
- In most states, the standard of proof in civil asset forfeiture laws is lower than the standard required to prove that a person has committed a crime. This provides Americans with almost no legal protection from abuse of the law.
 - In 27 states, law enforcement needs to demonstrate by a “preponderance of the evidence” that the property is related to criminal conduct. In 14 states, law enforcement only needs “probable cause” that the property is subject to forfeiture. Only Nebraska and Wisconsin require proof beyond a reasonable doubt for civil asset forfeiture– the highest standard and protection of individual rights.⁷
- Thirty-eight (38) states require the owner of the seized property to prove innocence. Only six states require the government to establish guilt for all kinds of property that may be seized.⁸
- In more than 80 percent of asset forfeiture cases, the owner of the property is never charged with a crime, yet government officials can and usually do keep the seized property.⁹

⁴ Marian Williams, Jefferson Holcomb, Tomislav Kovandzic, and Scott Bullock, *Policing for Profit*, INSTITUTE FOR JUSTICE, March 2010, http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Andrew Schneider and Mary Pat Flaherty, *Presumed Guilty: The Law's Victims in the War on Drugs*, PITTSBURGH PRESS, August 11-September 16, 1991.

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The FAIR Act would protect the rights of property owners in asset forfeiture proceedings by making the following reforms to federal civil asset forfeiture laws:

- The FAIR Act would end the federal equitable sharing program, establish reporting requirements for Department of Justice asset seizures, and ensure that owners have the opportunity to receive representation in asset forfeiture proceedings.
- The FAIR Act would restore the American principle of innocent until proven guilty by placing on the government the burden of proof to show that a property owner consented to his or her property being used in a crime.