



A STACKED DECK

**HOW MINNESOTA'S CIVIL FORFEITURE LAWS
PUT CITIZENS' PROPERTY AT RISK**



IJ

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Executive Summary

This report examines the use of civil forfeiture by Minnesota law enforcement agencies. While nearly all states engage in civil forfeiture, few publicly report these activities with as much detail as Minnesota. This is the first report to systematically examine those data.

Through civil forfeiture, police can seize property such as cash and cars merely suspected of involvement in a crime, and property owners must bring a lawsuit to win their property back. Because it is a civil process, not a criminal one, owners have fewer legal rights. And up to 90 percent of the proceeds of forfeited properties go to the law enforcement agencies that took them, giving agencies a financial stake in forfeiture proceedings.

Through this process, law enforcement agencies in Minnesota netted almost \$30 million from 2003 to 2010, taking more than 34,000 properties—the equivalent of one piece of property from every resident of the city of Roseville. This report also finds:

- Forfeiture revenues grew 75 percent from 2003 to 2010, even as crime rates declined, and more law enforcement agencies than ever participate in forfeiture—55 percent in 2010, up from just over a quarter in 2003.
- By and large, forfeiture dollars did not come from large busts: The average value of forfeited property was about \$1,000, less than the annual cost of a daily “venti” latte at

Starbucks. Half of the properties forfeited were worth \$400 or less, and only 4.2 percent were worth more than \$5,000.

- Cash was the most frequently seized—and kept—property, accounting for 51 percent of forfeitures, while only three percent of cash seizures were returned to owners.
- More than 80 percent of seizures resulted in the forfeiture of property to the government, while in just 10 percent of cases, property was returned to the owner.
- Few forfeitures are reviewed by judges. Data from 2010, after a change in reporting took effect, indicate that 66 percent of forfeitures went unchallenged by owners and courts reviewed only 17 percent of forfeitures.

These data suggest that Minnesota’s forfeiture deck is stacked against property owners. With the small property values involved and the daunting task of bringing a civil lawsuit to win property back, it should be no surprise that few owners challenge forfeitures. And a lack of judicial oversight combined with a strong financial incentive in forfeiture creates a situation ripe for abuse.

To fix the system, Minnesota legislators should remove financial incentives for forfeiture and provide better legal protections for owners caught up in forfeiture proceedings.

A lack of judicial oversight
combined with a strong financial incentive in forfeiture
**CREATES A SITUATION
RIPE FOR ABUSE.**

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WITH NO JUDICIAL OVERSIGHT WHATSOEVER.

Introduction

For decades, Minnesotans have taken pride in how their state is run, with transparent processes and a general lack of corruption—which is why a scandal that first surfaced in 2009 grabbed and remained in the headlines for years:

- “Gang Strike Force shut down after audit finds \$18,000, 13 cars missing”¹
- “Metro Gang Strike Force claims total \$840K”²
- “Payouts reveal brutal, rogue Metro Gang Strike Force”³

An August 20, 2009 report⁴ by a former U.S. attorney and a former FBI agent revealed how the Metro Gang Strike Force (MGSF)—a multijurisdictional team of police officers charged with reducing gang and drug-related crimes in the Twin Cities metropolitan area—had itself become the perpetrator of crimes. Members of the task force had, for years, been seizing cash and property, even from people with no connection to gang activities, and some of this property wound up in their own personal possession.⁵

The MGSF’s corruption has been dismissed by some as an “anomaly,”⁶ but the taking of property by Minnesota law enforcement agencies is anything but. At the center, indeed the source of the strike force’s activities was the legal mechanism of civil forfeiture. And as this report details, Minnesota agencies at all levels routinely used the same flawed laws to seize and forfeit properties of all types, netting almost \$30 million in the eight years studied here, 2003 to 2010. In more than 34,000 forfeitures, agencies took properties ranging from collectibles to entire homes. And, recent data suggest the

vast majority of forfeitures occur with no judicial oversight whatsoever.

Through civil forfeiture, law enforcement agencies confiscate property such as cars, TVs, jewelry and cash that they merely suspect may be connected to a crime. *Civil* forfeiture differs greatly from *criminal* forfeiture. With criminal forfeiture, it is the owner who is on trial, and the property can be forfeited only if the owner has first been convicted of a crime. But with civil forfeiture, the government proceeds against the property directly under the legal fiction that the property somehow acted to assist in the commission of a crime. Owners have fewer rights and legal protections in civil cases than in criminal cases. Worse, most of the proceeds of forfeited property go to the law enforcement agencies involved in the forfeitures. This system creates perverse incentives for law enforcement to pursue profits rather than prosecute perpetrators.

As documented in the Institute for Justice’s 2010 report *Policing for Profit: The Abuse of Civil Asset Forfeiture*, forfeiture is not just a problem in Minnesota.⁷ Most state and federal forfeiture laws offer little protection to property owners and encourage forfeitures by distributing some or all proceeds to law enforcement. Moreover, public accountability over civil forfeiture in the states is extremely limited. Only 29 states clearly require law enforcement to collect and report forfeiture data. In many states, we know nothing or next-to-nothing about the use of civil forfeiture or its proceeds.

While far from a perfect law, Minnesota’s forfeiture statutes are an exception when it comes to reporting. Because of the state’s annual reporting requirements and the level of detail required in the reports, we can take a closer look at how forfeiture is used in practice than is possible in other states. Unfortunately, the data show the consequences of a scheme

By allowing law enforcement agencies to
KEEP THE PROCEEDS
of the properties they seize, Minnesota law
creates incentives to pursue forfeitures.

that treats many property owners as guilty until proven innocent, tilts the forfeiture process strongly in favor of the government over property owners and incentivizes the self-funding of law enforcement through the seizure and forfeiture of citizens' property.

Minnesota's Civil Forfeiture Law

There are two types of civil forfeitures under Minnesota law—administrative forfeitures and judicial forfeitures. Under administrative forfeiture, police officers seize property and give the owner notice of the process they must follow to regain their property. Upon seizure, the property's title immediately transfers to the government, and the law, in most cases, requires the owner to file a civil lawsuit against his own property to get it back.⁸

If the owner fails or chooses not to file a lawsuit, ownership remains permanently with the government without a hearing. The property can be destroyed, kept or sold, and the vast majority of proceeds will go to agencies involved in the forfeiture process.

If, however, the owner does file a lawsuit, the administrative forfeiture becomes a judicial forfeiture, and the property owner enters the upside-down world of civil forfeiture litigation. In this world, lawsuits carry bizarre titles, such as *Schug v. Nine Thousand Nine Hundred Sixteen Dollars & Fifty Cents*,⁹ and owners are often at a procedural disadvantage.

There are three main problems with Minnesota's forfeiture laws. The first is the profit incentive. Minnesota statutes set the distribution of forfeiture revenue based on the type of incident that initiated the forfeiture, but in general, 70 percent

of forfeiture proceeds goes to the initiating agency, while 20 percent goes to the prosecutor and 10 percent to the state's general fund.¹⁰

By allowing law enforcement agencies to keep the proceeds of the properties they seize, Minnesota law creates incentives to pursue forfeitures. This encourages the taking of property and potentially skews law enforcement priorities away from crimes that do not offer significant financial rewards to law enforcement, such as burglary or assault.

Second, under Minnesota law, innocent owners whose property is used in an alleged crime bear the burden of proving they had no basis for knowing their property would be used in a crime. This puts owners accused of no wrongdoing in the position of having to prove a negative to win their property back.

Winning an innocent owner case is very hard to do, as Dave Laase of Cambridge, Minn., found out in 2009 when the Minnesota Supreme Court ruled against him. Dave's case became one of the most prominent civil forfeiture actions in Minnesota's history: *Laase v. 2007 Chevrolet Tahoe*.¹¹ He and his wife Jeanne co-owned a 2007 Chevrolet Tahoe. One evening in mid-2006, Jeanne was arrested for DWI. Dave was not in the truck and had no idea she was going to drink that night. But under Minnesota's law, Dave had to prove that he had no knowledge or even any basis for believing that Jeanne would commit a crime that triggers forfeiture.¹² This is no easy task. For example, a wife who knows her husband periodically meets co-workers at a bar on his way home from work will have a difficult time proving she is an innocent owner if he is stopped for driving while impaired.

Despite his best efforts, Dave was unable to overcome the presumption of guilt in Minnesota's laws, as interpreted by the

Figure 1: Percentage of Agencies Using Forfeiture, 2003 to 2010

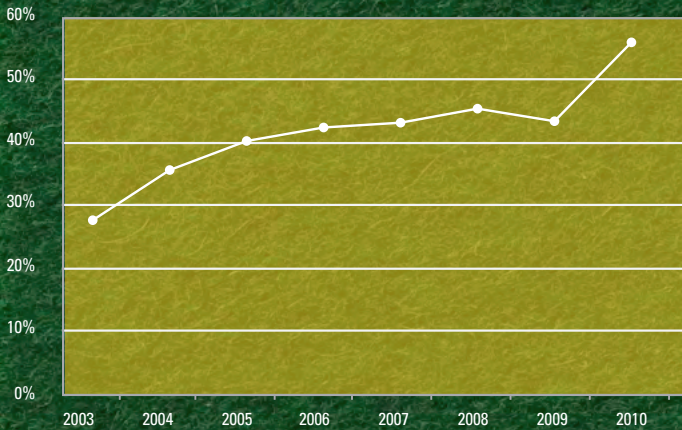
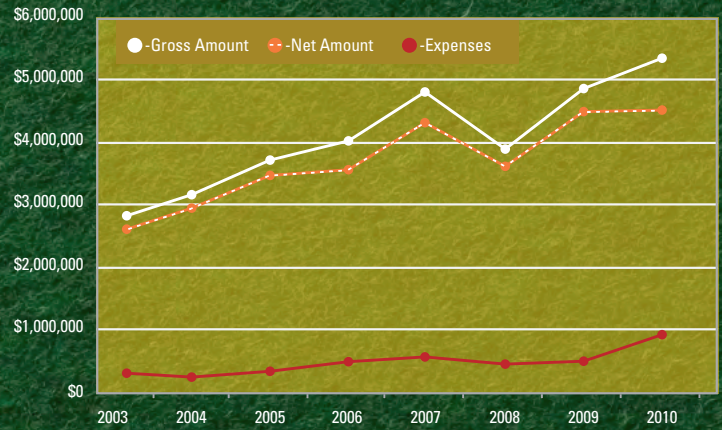


Figure 2: Total Value of Forfeitures, 2003 to 2010



state supreme court. In 2009, the court concluded that Dave was equally guilty of the crime and did not qualify as an innocent spouse. Although Jeanne admitted to violating the law and paid all court-imposed fines for the offense, Minnesota's current forfeiture laws punished both her and Dave by taking ownership of their jointly-owned vehicle. The state supreme court reversed the lower courts and ordered the forfeiture of the \$35,000 vehicle. The court allowed the city to either keep the truck for its own use or sell it and keep the proceeds—70 percent going to the budget of the initiating agency and 30 percent going to the budget of the prosecutor. The city decided to keep the vehicle and the local police force now uses it.

Third, in many cases, Minnesota law presumes that seized property is associated with a crime and the owner has the burden of proving it is not. In particular, anything seized in the vicinity of an alleged drug crime is presumed to be associated with it and thus forfeitable. So a property owner must prove that seized cash did not come from drug sales or a seized car was not an instrument in distributing illegal drugs.¹³ Owners must, in effect, prove their properties' innocence. This is in stark contrast to a criminal proceeding where prosecutors bear the burden of proving the accused is guilty beyond a reasonable doubt.

It is also in contrast to Minnesota's treatment of forfeiture for other crimes, such as prostitution¹⁴, fleeing a peace officer¹⁵, first or second degree DWI¹⁶ and other designated offenses.¹⁷ To forfeit property because of these offenses, the property owner must first be convicted of those crimes in criminal court. Then, the prosecutor must prove that the property is associated with that crime in civil court.

This is closer to the way it should be. Putting the initial requirement on the government to prove guilt is consistent

with the Anglo-American tradition of "innocent until proven guilty." Only after obtaining a criminal conviction should the next question be addressed about whether the property is connected to the crime and, thus, represents ill-gotten gains from criminal activity.

These three problems—the profit incentive, the burden on innocent owners and the presumption of guilt in drug-related forfeitures—combine to create a situation that is ripe for abuse. Law enforcement has great incentives to seize property and owners face steep challenges in trying to win it back.

It's no wonder, then, that early in 2010 Minnesota received a D grade in an Institute for Justice report evaluating the extent to which state asset forfeiture laws respect property rights.¹⁸ In the same year, attempts were made to completely overhaul the forfeiture laws, but significant lobbying from law enforcement representatives resulted in only minor, incremental changes, such as expanded reporting requirements. The state's laws remain stacked in favor of governments at the expense of property owners, and law enforcement work under significant incentives to pursue forfeiture revenue. As data from 2003 to 2010 indicate, this revenue has proven quite significant.

Minnesota Law Enforcement's Take

From 2003 to 2010, most of the state's law enforcement agencies engaged in civil forfeiture at one time or another. During those eight years, 75 percent of Minnesota law enforcement agencies engaged in forfeiture at least once.¹⁹ This produced a total of 34,773 forfeiture actions, which is equivalent to seizing one piece of property from every resident of the city of Roseville. This is likely an undercount, however, because

Table 1: Forfeiture Total Revenue by Agency Type, 2003 to 2010

	Gross	Expenses	Net	Actions	Percent of Total Actions
Local Police	\$13,226,647	\$1,468,930	\$11,800,890	18,069	51.96%
Sheriff's Office	\$5,278,080	\$549,921	\$4,748,235	5,167	14.86%
State Law Enforcement	\$3,057,785	\$536,239	\$2,539,234	2,799	8.05%
Drug Task Force	\$10,390,816	\$913,008	\$9,493,659	8,367	24.06%
Other ²⁰	\$527,395	\$13,474	\$513,920	371	1.07%

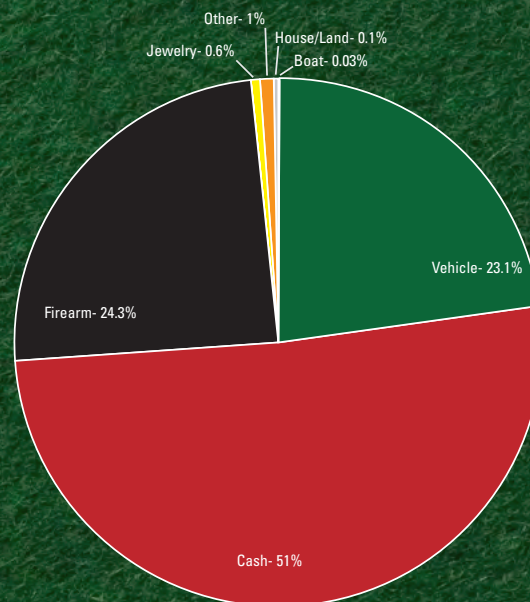
Note: These are the gross, expense and net figures reported by agencies. Net and expense figures do not sum to gross figures because of reporting errors by agencies. Removing those errors does not substantially change the totals.²¹

Table 2: Forfeiture Average Revenue by Agency Type, 2003 to 2010

	Gross	Expenses	Net
Local Police	\$898	\$100	\$802
Sheriff's Office	\$1,124	\$117	\$1,011
State Law Enforcement	\$1,121	\$197	\$931
Drug Task Force	\$1,325	\$116	\$1,210
Other	\$1,461	\$37	\$1,424

Note: These are the gross, expense and net figures reported by agencies. Net and expense figures do not sum to gross figures because of reporting errors by agencies. Removing those errors does not substantially change the averages.²²

Figure 3: Types of Properties Seized, 2003 to 2010



339 agencies failed to file forfeiture reports in at least one year, despite being legally required to do so.

As Figure 1 illustrates, an increasing number of agencies have engaged in forfeiture. In 2003, a little more than a quarter of Minnesota's agencies reported engaging in forfeiture. By 2010, that number had grown to 55 percent. That percentage could be higher, since almost eight percent of agencies did not file a report in that year.

The almost 35,000 forfeiture actions from 2003 to 2010 produced net revenue of \$29.1 million statewide. The value of the properties seized is actually more—in the neighborhood of \$32.5 million—but agencies subtract expenses incurred in processing forfeitures. As Figure 2 demonstrates, the total value of forfeitures increased substantially over time, with the net amount growing 75 percent from 2003 to 2010. But according to data from the Uniform Crime Report, crime rates in Minnesota over the same period actually decreased, from 3.4 percent in 2003 to 2.8 percent in 2010. So even though crime rates waned throughout the first decade of the 21st century, Minnesota law enforcement found ways to increase their forfeiture revenue by substantial amounts.

As Table 1 indicates, local police were the most active law enforcement agencies engaging in asset forfeiture. More than half of all forfeiture actions originated by local police, followed by drug task forces and county sheriffs. The least active were agencies in the "other" category, which includes the Department of Natural Resources (DNR), Airport Police and Department of Commerce.

The small percentages by the "other" agencies are a function of reporting requirements. In Minnesota, reporting requirements are tied to alleged crimes that trigger forfeitures, such as narcotics, fleeing, murder and so forth. This means some agencies that engaged in forfeitures where reporting was not required prior to 2010—such as the DNR seizing and forfeiting wild rice—appeared in forfeiture reports comparatively infrequently.²²

Value and Types of Property Forfeited

A common perception of forfeiture actions is one of large drug busts yielding enormous sums of cash or highly valued properties, but the data tell a different story. The average value of forfeited property is about \$1,000—less than the annual cost of a daily "venti" latte at Starbucks (not including tip).²³ An examination of data from 2003 to 2010 revealed this number remained somewhat consistent, with a low of \$672 in 2004 and a high of \$1,335 in 2009. The largest valued property seized and kept by law enforcement was \$196,384 in cash. The smallest was a nylon bag worth 22 cents.²⁴ Fifty percent of property kept by law enforcement was worth \$400 or less.

And while local police may be the most active agencies, the average values of the properties seized by police are the smallest of all agency types, as shown in Table 2.

The most commonly seized type of property was currency, or cash, accounting for 51 percent of seizures, as shown in

Figure 4: Unusual Items Forfeited in Minnesota

ROTO-TILLER
TELESCOPE DENTAL
COLLECTOR COINS CROWNS
NYLON BAG PLOW
POWER TOOLS CHAIRS
LEATHER 4X4 FARM
CD CASE TRACTOR
PORTABLE AIR CONDITIONER POTTERY
SUB-WOOFER GPS
MICROSCOPE BLACK
SKIDLOADER PORTFOLIO
SPORTS/BASEBALL CARDS

Figure 5: Percentage of Property Types Forfeited, 2003 to 2010

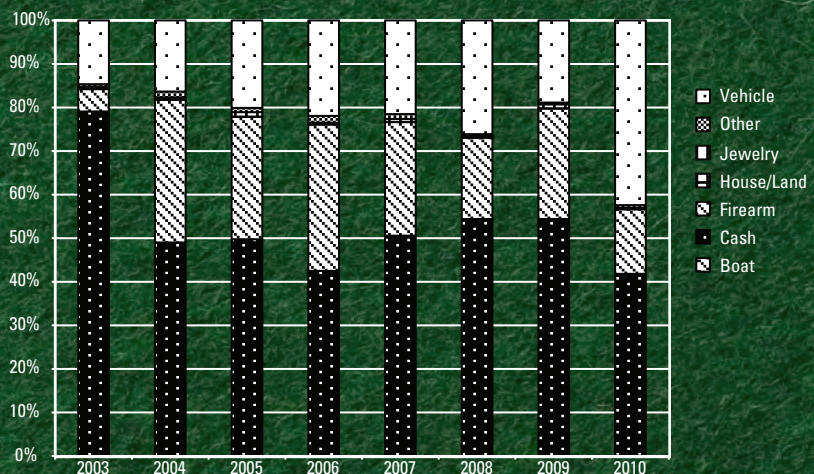


Figure 3. This was followed by firearms and vehicles. Taken together, currency, vehicles and firearms represented more than 98 percent of the properties seized. But forfeiture sweeps in properties of all types, even those that seem to have little connection to the commission of a crime. Examples include a roto-tiller, a telescope, dental crowns, sports/baseball cards, collector coins, a plow and a sub-woofer (see Figure 4 for more).

When examined over time, cash remained the most forfeited property type, but vehicles showed a steady increase, with a sharp spike in 2010 (see Figure 5). A large part of the spike came from a change in the state's law that required the reporting of forfeitures for DWI. Beginning in August 2010, agencies had to start reporting DWI forfeitures for the first time. In the latter half of 2010, DWIs constituted almost 40 percent of all forfeitures, and vehicles represented more than 75 percent of all of the property types forfeited for DWI, thereby resulting in the 2010 spike.

Once seized, most of those properties—74 percent—were kept by law enforcement in the form of cash, properties sold or properties retained for law enforcement use. As Figure 6 indicates, only 8.8 percent of the properties were returned to owners, while just 1.3 percent were returned to lienholders for a total of 10.1 percent returned to those with an ownership stake.

From 2003 to 2010, the retention of cash remained the most common disposition of seized property, but the selling of seized property grew steadily from 2003 to 2010, likely reflecting the growth in the forfeiture of vehicles and the spike from reporting DWI forfeitures in 2010. Figure 7 also shows an increase in the return of property to lienholders. Prior to 2010, returns to lienholders represented around one percent of the eventual disposition of properties, but in 2010 that percentage tripled to 3.2 percent. This is likely another result of the DWI reporting requirement beginning in 2010. Of all the property types included

in the reporting categories, vehicles are the most likely to have a lienholder, and with the new reporting requirement for DWIs and the concomitant increase in reported vehicle forfeitures, a reported increase in the returns to lienholders is a likely result.

As shown in Table 3, cash is not only the most commonly taken type of property, but also the most commonly kept by law enforcement—only three percent of owners who saw some form of currency seized received their property back, while vehicles and houses/land were returned to owners more than a quarter of the time.²⁶

Types of Crimes Tied to Forfeiture

As Figure 8 illustrates, the vast majority of forfeitures were tied to narcotics. All other crime types trailed far behind. An examination of trends from 2003 to 2010 showed these percentages generally remained consistent over time.

However, until August 2010, agencies were not required to report forfeitures for DWIs. The picture changed considerably once they were. As Table 4 illustrates, the percentage of drug-related forfeitures before August 1 was 87 percent. If reporting DWIs were not required, drug-related forfeitures would have represented approximately 77 percent of the total in the latter part of 2010. But once DWI forfeitures are included, the percentage of drug-related forfeitures drops to 47 percent. Of course, this is not an indication that drug-related forfeitures decreased—only that we learned of a sizable category of forfeitures previously unreported. DWI forfeitures represented almost 40 percent of total forfeitures from August 1 through the end of the year.

This is yet another indication of how forfeiture activity has been underestimated in Minnesota. DWI-related forfeitures were

Figure 6: Disposition of Seized Properties, 2003 to 2010

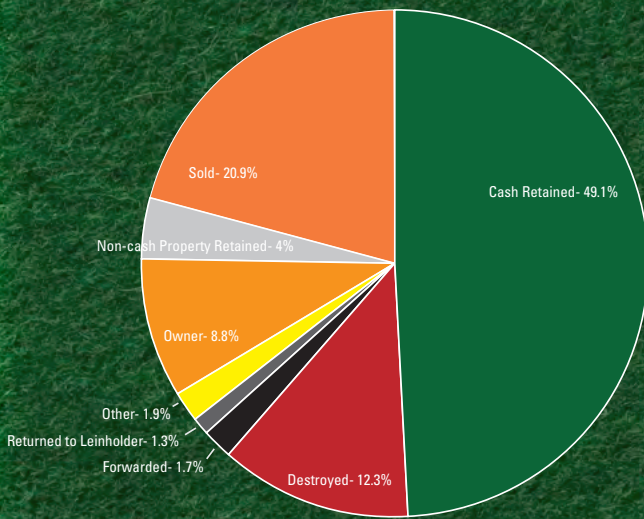
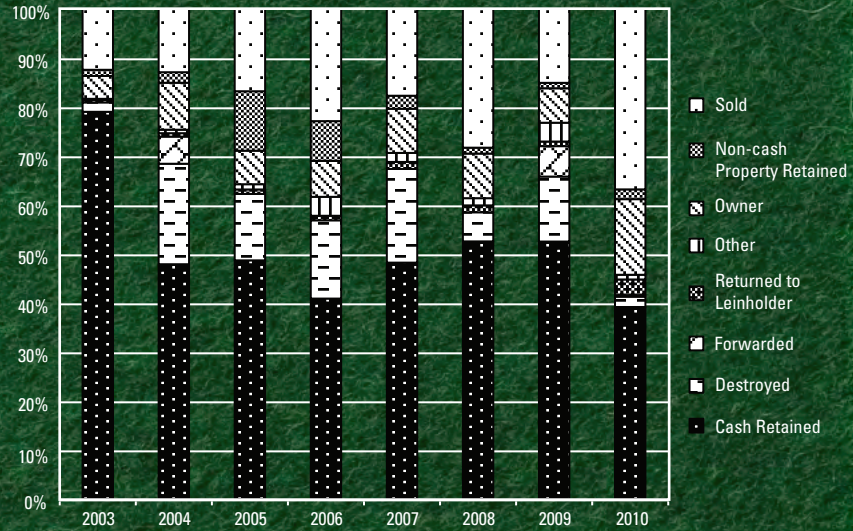


Figure 7: Disposition of Seized Property, 2003 to 2010



happening prior to August 1, 2010; they simply were not reported. Figures from 2010 indicate that had DWI forfeitures been included, forfeiture totals would have been greater, and likely significantly so. In addition, the percentage of total forfeitures tied to narcotics would have been substantially lower.

The differences in crime types also produced differences in the types of properties forfeited. As Table 5 indicates, the types of properties seized were sometimes closely tied—and logically so—to type of crime. For example, weapons crimes almost always yielded firearms. Fleeing from law enforcement almost always resulted in seized vehicles. Other crime types allow greater discretion for law enforcement. Narcotics, for example, sometimes produced vehicles or firearms, but most often it yielded cash.

But some in law enforcement, such as Roger Peterson, Chief of Police in Rochester, believe the incentive created in such circumstances is troubling. On March 11, 2010, Chief Peterson testified in support of a bill that would have significantly overhauled the state's forfeiture laws. Central to his testimony was concern about how the state's laws distort the investigative process. In a narcotics investigation, for example, a police officer often faces a choice—pursue an offender who just purchased drugs, an action that would result in the confiscation and destruction of a controlled substance, or pursue the dealer, an action that will yield forfeitable cash for the department's use. According to Chief Peterson, the state's laws have the significant potential to tilt the officer's decision toward the cash.

His honest observation drew sharp criticism from the Minnesota Police and Peace Officers Association, the largest law enforcement union in the state, which accused him of impugning the integrity of police officers. His response captures the essence of the dangers of asset forfeiture: "The people

responsible for conducting fair and impartial investigation should never have a vested financial interest in the outcome of a criminal case."²⁷

Results of Seizures

As Table 6 indicates, more than 80 percent of property seizures from 2003 to 2010 ended up in the forfeiture of the property to the government. These include administrative forfeitures—where property owners never challenge the seizure of their property—and judicial forfeitures in which a court reviews a seizure and decides in favor of forfeiture. In only a small percentage of the cases, 10.8 percent, did the property go back to the owner, such as through a court order or agreement.²⁸ And even when owners did regain their properties—such as through agreements—sometimes it was through the *purchase* of their properties back from the government.

In fact, more than two-thirds of the returned properties required the owner to buy it back from law enforcement. This produced more than \$1.3 million in profit for law enforcement agencies. Properties bought back from police included a 1972 Ferrari for \$105,000, a 2008 Dodge Charger for \$17,200 and a Winnebago for \$12,500. Some owners even had to "buy back" cash that was seized. Rather than receiving the full amount, owners agreed to receive a percentage back or pay fees or fines resulting in the loss of some of their original cash property.

A change in reporting in 2010 provides greater insight into what happens when property is seized for forfeiture. Beginning in August of that year, agencies were required to distinguish between administrative and judicial forfeitures. For the latter half of 2010, 66 percent of forfeitures were administrative, meaning they were never challenged by a property owner.

Table 3: Disposition of Property by Type, 2003 to 2010

	Boat	Cash	Firearm	House/Land	Jewelry	Other	Vehicle
Destroyed	0%	0%	49%	0%	5%	12%	2%
Lien	9%	0%	0%	0%	0%	0%	5%
Other	9%	1%	12%	0%	2%	3%	2%
Owner	18%	3%	5%	28%	16%	12%	26%
Retained	9%	96%	12%	0%	1%	14%	3%
Sold	55%	0%	22%	72%	76%	59%	62%

Figure 8: Criminal Activity Tied to Forfeitures, 2003 to 2010

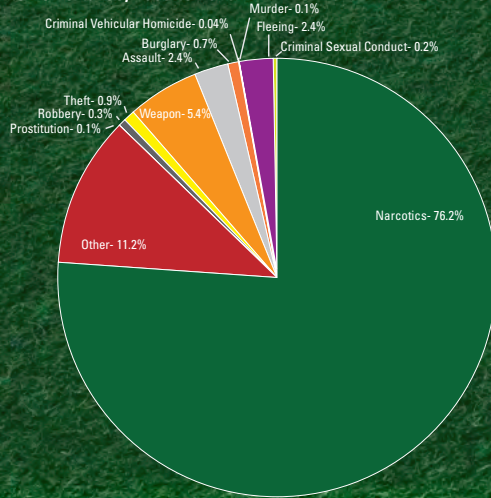


Table 4: 2010 Forfeitures with and without DWI Forfeitures, 2003 to 2010

	Pre-Aug. 1	Post-Aug. 1 without DWI	Post-Aug. 1 with DWI
Narcotics	87.26%	77.46%	46.62%
DWI	NA	NA	39.82%
Assault	0.74%	0.74%	0.44%
Burglary	0.79%	0.86%	0.52%
CSC	0.05%	0.25%	0.15%
CVH	0.16%	0%	0%
Fleeing	3.32%	3.75%	2.26%
Murder	0.05%	0.06%	0.04%
Other	6.21%	14.25%	8.58%
Prostitution	0.21%	0.43%	0.26%
Robbery	0.11%	0.12%	0.07%
Theft	1%	0.49%	0.30%
Weapon	0.11%	1.60%	0.96%

Courts reviewed 17.3 percent of seizures, returning property to owners in 2.9 percent of cases; the other 14.3 percent resulted in judicial forfeitures. In 16.7 percent of cases, the government and owners reached an agreement that possibly resulted in the return of property.

Federal Forfeitures

The numbers above provide an estimate of forfeiture activity in Minnesota, but they are not the entire picture. Law enforcement agencies also partner with the federal government—through a program called equitable sharing—to bring in millions more. Equitable sharing finds its genesis in the Comprehensive Crime Control Act of 1984, which allows state and local law enforcement agencies to transfer assets they seize to federal law enforcement agencies. Federal law enforcement officials can take possession of this property and initiate federal forfeiture actions as long as the “conduct giving rise to the seizure is in violation of federal law and where federal law provides for forfeiture.”²⁹ As under state law, seized assets transferred to the federal government through equitable sharing may be forfeited regardless of whether an individual is charged, let alone convicted, of a crime in either state or federal courts. If the assets are successfully forfeited to the federal government, the funds are deposited in the appropriate federal asset forfeiture fund, and state and local agencies receive a percentage back.³⁰

There are two forms of equitable sharing activities. “Joint investigative” forfeitures result from investigative activities involving federal and state or local law enforcement agencies. State and local agencies receive a percentage of the funds based on their role and effort in a particular seizure. “Adoptive forfeitures” occur when state and local agencies seize assets as the result of their own investigation of state crimes. If the original crime is also a federal crime, the property is forfeitable under federal law. State and local agencies may then transfer seized property to federal law enforcement agencies, which “adopt” this property for federal forfeiture proceedings. State and local agencies receive 80 percent of the assets obtained from adoptive forfeitures, and the federal government retains the remaining 20 percent.

As Table 7 indicates, Minnesota law enforcement enjoys a healthy take from equitable sharing, both from the Department of Justice’s Asset Forfeiture Fund (AFF) and the Treasury Department’s Treasury Forfeiture Fund (TFF). On average, law enforcement agencies in the state brought in almost \$2 million per year, with 2009 realizing more than \$3 million in proceeds. Between 2000 and 2011, Minnesota law enforcement amassed more than \$23 million in equitable sharing funds. It is important to remember that this is not a measure of total forfeiture activity through equitable sharing. This is only what the state received back. Some percentage was retained by the federal agencies.³¹

Table 5: Property Type Seized by Type of Crime, 2003 to 2010

	Boat	Cash	Firearm	House/Land	Jewelry	Other	Vehicle
Assault	0%	1%	93%	0%	0%	0%	6%
Burglary	0%	6%	32%	0%	0%	2%	60%
Criminal Sexual Conduct	0%	6%	76%	0%	0%	3%	15%
Criminal Vehicular Homicide	0%	7%	0%	0%	0%	0%	93%
Fleeing	0%	2%	1%	0%	0%	0%	96%
Murder	0%	0%	77%	0%	0%	0%	23%
Narcotics	0%	66%	14%	0%	1%	1%	18%
Other	0%	3%	44%	0%	0%	1%	52%
Prostitution	0%	43%	26%	0%	0%	2%	29%
Robbery	0%	1%	84%	0%	0%	0%	15%
Theft	0%	7%	53%	0%	0%	7%	33%
Weapon	0%	0%	99%	0%	0%	1%	0%

Table 6: Result of Seizures, 2003 to 2010

	Percent
Forfeiture	83.6%
Property Returned in Part or in Whole by Agreement	6.9%
Other	5.7%
Property Returned by Court Order	3.9%

Table 7: Minnesota's Take of Equitable Sharing, 2003 to 2010

Year	AFF Totals	TFF Totals	Equitable Sharing Totals
FY 2000	\$1,046,751	\$89,000	\$1,135,751
FY 2001	\$1,348,423	\$6,000	\$1,354,423
FY 2002	\$1,810,187	\$2,000	\$1,812,187
FY 2003	\$1,133,648	NA	\$1,133,648
FY 2004	\$1,369,123	\$7,000	\$1,376,123
FY 2005	\$1,930,861	\$0	\$1,930,861
FY 2006	\$1,498,393	\$434,000	\$1,932,393
FY 2007	\$1,960,561	\$46,000	\$2,006,561
FY 2008	\$2,436,864	\$7,000	\$2,443,864
FY 2009	\$3,020,632	\$71,000	\$3,091,632
FY 2010	\$2,758,675	\$235,000	\$2,993,675
FY 2011	\$1,929,775	\$192,000	\$2,121,775
Total	\$22,243,893	\$1,089,000	\$23,332,893
Average	\$1,853,658	\$99,000	\$1,944,408

What the Data Mean for Minnesota

Numbers like these tell a clear story about forfeiture in Minnesota: It happens often, all over the state, and its use is growing. From 2003 to 2010, 75 percent of Minnesota law enforcement agencies engaged in forfeiture at least once, and the number grew 55 percent from 2003 to 2010. These are conservative estimates, since 339 agencies failed to file forfeiture reports in at least one year, despite being legally required to do so.

At first glance, the net revenue from forfeiture—\$29.1 million just from state actions—seems to lend credence to proponents' assertions that forfeiture bleeds resources from crime syndicates and drug rings. Yet, the average value of property forfeited under state law is about \$1,000. Fifty percent of property kept by law enforcement was worth \$400 or less, and less than 4.2 percent of forfeitures in Minnesota from 2003 to 2010 were for greater than \$5,000. These hardly seem numbers representative of kingpins and massive drug busts.

Most of the property forfeited, 51 percent, is cash, the easiest to process and the most useful for law enforcement purposes. But with the DWI reporting change in 2010, it appears vehicles make up a substantial percentage of properties forfeited. This is yet another indication of the conservative nature of our estimates. DWI-related forfeitures are not new, they are just newly reported.

Particularly troubling is how infrequently owners challenge the taking of their property and how infrequently courts review forfeitures.

More than 80 percent of seizures from 2003 to 2010 ended up in the forfeiture of the property to the government. Thanks to the more detailed reporting required in 2010, we know that, at least for August through December 2010, a large majority of forfeitures went unchallenged—66 percent. And courts reviewed only 17.3 percent of forfeiture cases. These recent percentages show just how infrequent it is that forfeiture cases receive independent judicial oversight.

It makes sense that few challenge forfeitures: The property values involved are often small, while the practical and legal difficulties are large. To challenge a forfeiture, the owner or his attorney must prepare and serve a detailed complaint on the prosecutor within 60 days. For most Americans, retaining a defense lawyer skilled in forfeiture litigation is not a familiar task. And the process is expensive. For example, the initial filing fee for a civil lawsuit in Ramsey County—where St. Paul is located—can be as much as \$320 and does not include the cost of hiring a lawyer, which can easily add thousands of dollars to the litigation's expense.³² Moreover, public defenders who represent the indigent in criminal cases, are prohibited by law to litigate civil cases, such as civil forfeiture.³³ Add to all of that a process that places the burden on innocent owners and presumes the "guilt" of properties in drug-related cases.

The worry is that the forfeiture deck in Minnesota is stacked against property owners. And because it is, law enforcement can take property with little risk of challenge or judicial oversight. And more than that, agencies will profit from doing so. This is a situation ripe for abuse and corruption.

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Recommendations for Reform

Minnesotans desperately need reforms to the state's forfeiture laws. This report shows that forfeiture abuse is not a one-time problem uniquely associated with the Metro Gang Strike Force. Forfeiture use is growing while oversight and legal protections for owners are limited, putting the property of Minnesotans at risk.

Most members of law enforcement are hardworking and honest. But as long as state law gives law enforcement an incentive to put profits ahead of justice, the risk and the perception of corruption remain. This report is not the first to highlight the need for reform. State forfeiture laws dealing with spouses and other innocent owners trying to get back jointly-owned seized property are so bad that the Minnesota Supreme Court called on the legislature to clarify and standardize the state's forfeiture laws in 2009.³⁴

In response to actual corruption and the judiciary's calls for reform, state legislators have been too slow and modest. Two governors have been publicly silent on the issue. In two of the last three legislative sessions, Minnesota lawmakers changed the state's forfeiture laws. But these were only with simple and small changes—notice, reporting, increased access to conciliation (small claims) court and clarifications of existing law.

More substantive changes are needed—ideally doing away with civil forfeiture and replacing it with criminal forfeiture. Short of that, legislators could make other reforms to better protect property owners, including:

1. Establish in forfeiture law the presumption of innocence by requiring a conviction in criminal court before the state takes ultimate title to the instruments and proceeds of

a crime. People should not lose property without being convicted of a crime. Currently, this is the case for some crimes, such as prostitution, where a conviction of the offender is required to forfeit a vehicle. But for distribution of illegal drugs, the vehicle is presumed guilty. Legislators should erase these irrational differences based on the type of crime.

2. End the incentive to take property caused by forfeiture funds going to supplement the budgets of police agencies and prosecutors. Legislators should enact laws that direct forfeiture funds to the state's general fund or statewide programs run by the Minnesota Department of Public Safety that support victim reparations, witness protection and training for members of law enforcement, public defenders and defense attorneys.
3. Respond to the Minnesota Supreme Court's call for reform to the state's innocent owner law. Spouses and other innocent owners should not have the burden of proving their innocence to win their property back. Instead, the burden of proof should be switched to the prosecutor, as in criminal cases, and prosecutors should have to prove actual knowledge or willful blindness. Only with these changes will the property rights of spouses and other innocent owners be recognized and respected.

The evidence in this report shows that not only is the potential for another forfeiture scandal quite real, but the deck is stacked against innocent Minnesota property owners right now. Law enforcement agencies take and keep vast sums with little accountability or judicial oversight, and owners can do little about it. To protect innocent property owners and ensure the impartial administration of justice, state officials should enact new restrictions on forfeiture powers. Only then can lawmakers be assured that Minnesotans will escape another blow to their trust in good government.

Endnotes

1 <http://www.startribune.com/local/stpaul/45485362.html?refer=y>

2 <http://minnesota.publicradio.org/display/web/2012/07/24/news/metro-gang-strike-force-claims-total-840000/>

3 <http://www.startribune.com/local/165028086.html?refer=y>

4 Luger, A., & Egelhof, J. (2009). Report of the metro gang strike force review panel. St. Paul, MN: Minnesota Department of Public Safety.

5 Indeed, some MGSF employees used the term “money police” to describe their focus on financial seizures. The 2009 report found:

- Police officers repeatedly took, for their personal use, property obtained during searches including large screen televisions, laptops, jewelry and other items;
- Many items, including narcotics, that were seized by the Strike Force were never entered into evidence;
- MGSF officers stopped individuals who had no connection to gang activities and seized money and property from them;
- MGSF officers seized funds from individuals regardless of any intent to file charges and without regard to whether the funds could reasonably be connected to illegal activity; and
- Even during searches conducted pursuant to a warrant, MGSF officers seized money, televisions, computers and jewelry that bore no relation to the matter under investigation; MGSF seized assets but made no attempts to follow up the investigation or bring the matter to the attention of prosecutors.

6 <http://minnesota.publicradio.org/display/web/2009/10/29/strike-force-hearing/>

7 Williams, M. R., Holcomb, J. E., Kovandzic, T. V., & Bullock, S. (2010). Policing for profit: The abuse of civil asset forfeiture. Arlington, VA: Institute for Justice.

8 The responsibility to convert an administrative forfeiture to a judicial forfeiture by filing a civil lawsuit falls on the property owner in DWI and drug-related cases according to Minn. Stat. 169A.63 subd. 8(d) and Minn. Stat. 609.5314 subd. 3, respectively. In other cases, such as designated offenses, prostitution and fleeing a police officer, the responsibility for filing a civil lawsuit against the property falls on the prosecutor, according to Minn. Stat. 609.5313(a). Finally, a completely different procedure is required for forfeitures related to drive-by shootings. In such cases, under Minn. Stat. 609.5318, the prosecutor must first give notice, the property owner must then file a demand for judicial determination, and then the prosecutor must file a complaint in civil court.

9 *Schug v. Nine Thousand Nine Hundred Sixteen Dollars & Fifty Cents in U.S. Currency*, 669 N.W.2d 379, 382 (Minn. App. 2003).

10 Minnesota statute 84.7741 subd.10(b)(2). The other distribution schemes are as follows:

Offense	Percent to Prosecutors	Percent to Police	Percent to Other	Statute
Off-highway vehicles	30	70	0	84.7741 subd.10(b)(2)
Driving While Impaired	30	70	0	169A.63 subd.10(b)(2)
Prostitution	20	40	40 (local city)	609.5315 subd.5a(2)
Trafficking of persons	20	40	40 (Department of Public Safety)	609.5315 subd.5b(2)

11 *Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431 (Minn. 2009).

12 Minn. Stat. 169a.63 subd. 7(d).

13 Minn. Stat. 609.5314 subd. 3 requires the filing of a complaint by the property owner to convert an administrative forfeiture to a judicial forfeiture in drug-related cases. Minn. Stat. 609.531 subd. 6a(c) puts the burden of proof on the property owner where it states, “The appropriate agency handling the forfeiture has the benefit of the evidentiary presumption of section 609.5314, subdivision 1, for forfeitures related to controlled substances.”

14 Minn. Stat. 609.5312 subd. 3.

15 Minn. Stat. 609.5312 subd 4.

16 *Patino v. One 2007 Chevrolet*, VIN#1GNFC16017J255427, *Texas License Plate # 578VYH* (Minn. 2012), which found a vehicle cannot be judicially forfeited without a conviction of a designated offense of first or second degree DWI under Minn. Stat. 169A.63 subd. 7(a). For an overview of Minnesota’s DWI Laws, see: <http://www.house.leg.state.mn.us/hrd/pubs/DWIlover.pdf>.

17 Minn. Stat. 609.531 subd. 1(f) defines designated offenses as including weapons violations as well as numerous felonies such as murder, criminal vehicular homicide and false imprisonment. Minn. Stat. 609.531 subd. 6a(b) puts the burden of proof on the government where it states “an asset is subject to a designated offense forfeiture under section 609.5312 only if the underlying designated offense is established by proof of a criminal conviction.”

18 Williams, Holcomb, Kovandzic, and Bullock, 2010.

19 From 2003 to 2010, 539 law enforcement agencies existed in Minnesota for at least one year.

20 Other agency types include Tribal, Public Safety, Parks,

Transit, Airport, Conservation, Alcohol and Gambling Enforcement, Bureau of Criminal Apprehension, Department of Corrections and Department of Commerce.

21 The figures with reporting errors removed are:

	Gross	Expenses	Net	Actions	Percent of Total Actions
Local Police	\$13,166,630	\$1,375,434	\$11,791,196	17,896	52.05%
Sheriff's Office	\$5,252,953	\$508,204	\$4,744,749	5,112	14.87%
State Law Enforcement	\$3,036,045	\$497,498	\$2,538,547	2,713	7.89%
Drug Task Force	\$10,334,220	\$873,436	\$9,460,784	8,291	24.11%
Other	\$527,395	\$13,474	\$513,920	371	1.08%

22 For the DNR, this changed in 2010. That agency is now required to report all forfeitures.

23 http://www.cbsnews.com/8301-505144_162-57351515/starbucks-raising-prices-in-some-markets/

24 The data also listed some properties kept by law enforcement as valued at \$0, including cash. We treated these as reporting errors.

25 The figures with reporting errors removed are:

	Gross	Expenses	Net
Local Police	\$905	\$95	\$810
Sheriff's Office	\$1,133	\$110	\$1,023
State Law Enforcement	\$1,148	\$188	\$960
Drug Task Force	\$1,331	\$113	\$1,218
Other	\$1,461	\$37	\$1,424

26 Although homes are seized and forfeited in Minnesota, this is a comparatively rare event, given a 2008 state supreme court decision that prohibits the forfeiture of homestead property under the drug-asset forfeiture statute (*Torgelson v. Real Property Known as 17138 880th Ave., Renville County*, 749 N.W.2d 24 (Minn., 2008)). In Minnesota, homestead property denotes a primary residence owned by the inhabitant. This leaves second homes, investment property and other non-primary residences open for forfeiture.

27 Letters exchanged between Roger Peterson to Dennis Flaherty (March 15 and 16, 2010) available at <http://tinyurl.com/Ltr2Flaherty>

28 Through agreements, property owners can regain some or all of their properties. The data do not make it clear what percentage of agreements result in the return of all properties versus just some of the properties. Note that the percentages of properties returned to owner differ between Table 6 and Figure 6 by 0.7%. This is because in Table 6, "Property Returned by Court Order" and "Property Returned in Part or in Whole by Agreement" include properties destroyed by court order or by agreement. In the raw data, these properties are coded in one place as "court" or "agreement," important categorizations for Table 6, and coded separately as destroyed, a classification important for Figure 6.

29 United States Department of Justice. (2009). *Guide to equitable sharing for state and local law enforcement agencies*. Washington, D.C., p. 6.

30 The Department of Justice Assets Forfeiture Fund accepts funds from the majority of federal law enforcement agencies, including the FBI, DEA and ATF. The Treasury Forfeiture Fund accepts deposits from Treasury agencies, such as the Secret Service, and financial and consumer agencies within the federal government.

31 TFF equitable sharing totals come from Treasury Department annual reports available at: <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Pages/annual-reports.aspx>. AFF totals come from the Department of Justice and are available at: <http://www.justice.gov/jmd/afp/02fundreport/index.htm>.

32 Legislation enacted in 2012 increases property owners' access to Minnesota's reconciliation (small claims) courts for seized property worth up to \$15,000. This may lower one of the costs of civil forfeiture litigation, since court costs in reconciliation court can be as little as zero. In Ramsey County, for example, the property owner would not have to pay the \$320 fee but instead pay a filing fee of \$75 for property worth up to that new limit. There is no filing fee if the property is worth less than \$500.

33 Minn. Stat. 611.26 subd. 6.

34 In *Laase v. 2007 Chevrolet Tahoe*, the Court noted, "[T] here is reason to question the balance struck by the legislature between various competing interests. For example, given the general disfavor of forfeiture statutes, the wisdom of vesting the right to possession of a forfeited vehicle in the law enforcement agency responsible for the arrest of a defendant and the forfeiture of a defendant's vehicle is not immediately evident. But such issues are for the legislature to address."

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Dick M. Carpenter II, Ph.D., serves as a director of strategic research for the Institute for Justice. He works with IJ staff and attorneys to define, implement and manage social science research. Results of his work have appeared in academic journals such as *Economic Development Quarterly*, *Urban Studies*, *Regulation and Governance*, *Independent Review*, *Journal of Advanced Academics*, *Journal of Special Education*, *The Forum*, *Education and Urban Society*, *Journal of School Choice* and *Leadership*, as well as magazines including *Regulation*, *Phi Delta Kappan* and the *American School Board Journal*.



The results of his research are used by state education officials in accountability reporting, have been influential in crafting policy in state legislatures, and have been cited in briefs to state and federal courts, including the U.S. Supreme Court. Dr. Carpenter has served as an expert witness in several federal lawsuits and has been quoted in newspapers such as *The Wall Street Journal*, *New York Sun*, *Denver Post*, *Atlanta Journal-Constitution*, *Chronicle of Higher Education*, *Dallas Morning News*, *Education Week* and *The Washington Times*.

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Under his leadership, the Institute for Justice Minnesota Chapter launched a successful campaign to restore economic liberty as a basic civil right under both the Minnesota state and U.S. Constitutions. IJ-MN freed African hairbraiders from the state of Minnesota's onerous cosmetology licensing regime, stopped the government from enforcing a blanket ban on advertising, soliciting or using the Internet to conduct lawful, direct sales of wine, and forced the city of Red Wing to end its ban on interstate shipping of trash.

McGrath was also instrumental in lobbying the Minnesota legislature to reform its eminent domain laws in 2006 and deregulate intrastate household goods movers in 2008.

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The Institute for Justice is a nonprofit, public interest law firm that litigates to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government. The Institute's strategic research program produces high-quality research to inform public policy debates on issues central to IJ's mission.