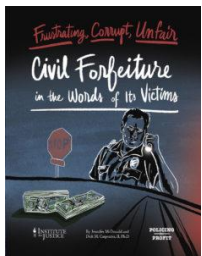


Civil Forfeiture Is Frustrating, Corrupt and Unfair

What Legislators Can Do



In the first large-scale survey of its kind, civil forfeiture victims call the process **frustrating, corrupt, and unfair**. IJ's report adds to a growing body of research showing that civil forfeiture does little to fight crime—but it does take property from people who never have been proven guilty of doing anything wrong.

To protect innocent Americans from losing property unjustly, state legislators should:

- Enact strong transparency and accountability requirements.
- End civil forfeiture and replace it with a criminal forfeiture process.
- Direct all forfeiture proceeds to a neutral fund, such as a state's general fund or school fund.
- Strengthen protections for innocent third-party owners.
- Close the federal equitable sharing loophole.

State forfeiture laws make it too easy for prosecutors to forfeit citizens' property and the laws give them a strong financial incentive to do so:

- Thirty-five states earn overall grades of D+ or worse for extending property owners meager protections and giving police and prosecutors large financial stakes in forfeiture proceeds.
- Since the 2015 edition of *Policing for Profit*, 34 states have adopted some form of forfeiture reform. Unfortunately, few of those reforms have tackled the central problems with civil forfeiture laws.
- New Mexico earns the nation's only A for abolishing civil forfeiture and eliminating any financial incentive by directing forfeiture proceeds to the state's general fund.
- Importantly, New Mexico's reform has not compromised public safety: In the months and years after the reform, the state's crime rates did not increase as forfeiture proponents predicted, suggesting forfeiture does not deter crime and law enforcement agencies can do their jobs without forfeiture proceeds.

Over \$23 billion
in state forfeiture revenue
2000–2019

Between 2000 and 2019, states forfeited over \$23 billion. Because not all states provided full data, this total drastically underestimates the true scope of state-level forfeitures. This total also does not include the substantial sums the federal government shared with state and local law enforcement agencies that participated in the equitable sharing program over that period.

The Equitable Sharing Loophole

The federal equitable sharing program enables state and local law enforcement agencies to evade limits that state legislatures enacted on civil forfeiture—including higher standards of proof or requirements that forfeiture proceeds be deposited in the state treasury—by partnering with federal law enforcement on forfeitures in exchange for up to 80% of the proceeds.

Until Congress abolishes this abusive program, the only way to stop state police from circumventing state law is to close the equitable sharing loophole.

Lackluster Transparency & Accountability

Forfeiture programs nationwide suffer from a lack of transparency and accountability. On IJ’s forfeiture transparency and accountability report cards, a number of states do well on a few elements. But only Arizona receives all A’s and B’s. And many states receive mostly D’s and F’s.

On their own, greater transparency and accountability cannot fix the fundamental problems with forfeiture. But they can ensure forfeiture programs are exposed to the light of day. Legislators and the public then can see how forfeiture is being used and what its proceeds are buying. Such information is needed to ensure trust and integrity in police and prosecutors.

Model Legislation

www.ij.org/criminal-forfeiture

www.ij.org/anti-circumvention

www.ij.org/forfeiture-reporting

Forfeitures Under State Laws: Key Facts	
Median Value	<p>Across 21 states with available data, the median currency forfeiture averages just \$1,276 between 2015 and 2019. Such relatively small amounts are hardly the stuff of big-time criminals.</p> <p>See Figure 6 in <i>Policing for Profit</i>.</p>
Property Types	<p>In 2018, on average across 15 states with data, 68% of forfeitures were currency; an additional 16% were vehicles. This suggests law enforcement may unduly focus on taking cash and property like cars that is easily converted into cash.</p> <p>See Figure 5 in <i>Policing for Profit</i>.</p>
Civil vs. Criminal	<p>In the three states that track whether forfeitures were processed using civil or criminal procedures, between 71% and 93% of forfeitures were processed using civil procedures. These procedures offer owners far less protection from unjust forfeitures.</p> <p>See Figure 12 in <i>Policing for Profit</i>.</p>
Administrative vs. Judicial	<p>Only Minnesota tracks whether forfeitures were initiated under administrative or judicial procedures. From 2010 to 2018, at least 76% of forfeitures were initiated under administrative procedures, where the government need not even file a forfeiture complaint laying out its case in court. Only 7% were initiated under judicial ones.</p> <p>Data are from the Minnesota State Auditor. See Figure 13 in <i>Policing for Profit</i>.</p>
Expenditures	<p>In 2018, among 13 states with data, the three largest categories of spending from forfeiture funds were equipment and capital expenditures (32%), other (21%), and personnel (19%). This last category is particularly troubling. It can include law enforcement salaries, benefits, overtime and even bonuses, giving police and prosecutors a strong incentive to seize and forfeit property.</p> <p>See Figure 25 in <i>Policing for Profit</i>.</p>

Learn more:

www.ij.org/report/policing-for-profit-3
www.ij.org/report/frustrating-corrupt-unfair
www.ij.org/TransparencyReportCards



Lee McGrath
 Senior Legislative Counsel
 Institute for Justice
 lmcgrath@ij.org
 cellphone: (612) 963-0296

