

ANTI-CIRCUMVENTION FORFEITURE ACT

Regulating Local and State Agencies' Access to Federal Forfeiture Litigation
Under the Federal Equitable Sharing Program.

September 9, 2023

100:1 Prohibition on federal adoption.

- A. A state or local law enforcement agency shall not transfer or offer for adoption property, seized under State law, to a federal agency for the purpose of forfeiture under 18 U.S. Code Chapter 46 or other federal law.¹
- B. Paragraph A only applies to a seizure by state and local law enforcement agencies pursuant to their own authority under state law to seize property and without the involvement of the federal government in the seizure. Nothing in paragraph A should be construed to limit state and local agencies from participating in joint task forces with the federal government.
- C. The state and local law enforcement agency is prohibited from accepting payment of any kind or distribution of forfeiture proceeds from the federal government if the state or local law enforcement agency violates paragraph A. The state or local law enforcement agency shall transfer any distribution of proceeds to the state's general fund.

100:2 Limitation on state/federal joint task forces.

- A. A joint task force of a state or local law enforcement agency and a federal agency shall transfer seized property to the state prosecuting authority for forfeiture litigation under state law unless the seized property includes U.S. currency that exceeds \$_____.
- B. The state and local law enforcement agency is prohibited from accepting payment of any kind or distribution of forfeiture proceeds from the federal government if the joint task force violates paragraph A. A state or local member of the task force shall transfer any distribution of proceeds to the state's general fund.
- C. Nothing in paragraph A shall be construed to prohibit the federal government, acting alone, from seizing property and seeking forfeiture under federal law.
- D. Nothing in paragraphs A shall be construed to restrict a local or state law enforcement agent from seizing, at any time, contraband or property the agent has probable cause to believe, under state law, is the proceeds or instruments of a crime that subjects property to forfeiture.

¹ Requiring a minimum seizure amount is an alternative to a prohibition on adoptions. For example, paragraph A can be amended to include a minimum by adding at the end of the sentence: "...unless the seized property includes U.S. currency that exceeds \$_____". A recommended amount is \$50,000 in U.S. currency. We recommend only using currency to set the minimum and not the value of other seized property. Currency is easy to count and minimizes disputes about the exact amount of the minimum.

100:36 Guidance.

- A. A prosecuting authority, after consulting with the responsible U.S. Attorney, shall establish guidelines for joint task forces and multijurisdictional collaboration in the prosecuting authority's jurisdiction. The guidelines shall be consistent with federal safeguards to ensure that activities are conducted in compliance with the U.S. Department of Justice's policies.
- B. The Department of Public Safety may offer training on seizure and forfeiture under this chapter.

For more information, please contact the Institute for Justice.

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