



An Issue Brief on

Civil Asset Forfeiture



What is civil asset forfeiture?

You may have heard of strange court cases like United States v. Article Consisting of 50,000 Cardboard Boxes More or Less, Each Containing One Pair of Clacker Balls, or United States v. 8 Rhodesian Statues.ⁱ These cases are part of a police practice known as “civil asset forfeiture,” under which your car, cash, real estate or other assets can be seized if the police state that they have reason to believe that they are connected to a crime.

The proceeding is against the asset in civil court, not the person in criminal court, so many normal constitutional protections don’t apply. For example, if you’re charged with a crime, you have a right to counsel, and to be informed of your rights, and the standard of proof to convict you is “beyond a reasonable doubt.” Your car or cash gets none of this.

Private attorneys are expensive, and this is a specialized field of law, so most forfeiture proceedings go uncontested. As part of the War on Drugs, in the 1980s forfeiture laws were loosened to allow police to keep the proceeds of forfeitures, giving them an incentive to over-seize. The Supreme Court ruled that the practice did not conflict with the Fifth or Fourteenth Amendments.ⁱⁱ The result was that by 2015, the total value of assets seized by forfeiture in the United States exceeded the total value lost to robberies and burglaries combined.ⁱⁱⁱ Over the last 20 years, this total value has reached nearly \$70 billion.^{iv} And loosening forfeiture policy doesn’t even seem to achieve its stated purpose of reducing drug crime.^v

Recognizing this problem, the state of New Mexico abolished civil asset forfeiture entirely in 2015. Prosecutors must first convict a property owner of an underlying crime, and then prove by clear and convincing evidence that the property was an instrument or proceeds of that crime.

The Supreme Court has shown signs of concern regarding the lengths to which civil asset forfeiture has been taken. In a blistering concurrence in 2017, Justice Thomas described its abuses as “egregious and well-chronicled.”^{vi} In 2020, six years after

Tyson Timbs’ \$35,000 Land Rover was seized, the Supreme Court ruled that its seizure violated the Excessive Fines clause of the Eighth Amendment.^{vii} But this case only deals with an extreme instance of seizures: Most cars seized under civil asset forfeiture laws aren’t worth \$35,000; the average seizure is of about \$1,300 in assets.^{viii}

What is wrong with civil asset forfeiture?

Civil asset forfeiture turns the usual elements of due process on their head. It requires the owners of the property to prove an asset’s innocence of being used in illegal activity in order to get it back.^{ix} In most states, you do not even have to be charged or convicted of a crime in order to have property seized. Property can also be seized regardless of *who* was suspected of committing a crime with it. This means that any third party who uses the property or assets for suspected “illegal activity” can put the owner at risk of having the property seized. One couple in Philadelphia lost their home to civil asset forfeiture after their son sold \$40 of drugs from their porch.^x

Law enforcement often also offers victims of civil forfeiture “cash for freedom” deals, allowing suspects to sign their property over to police departments in order to avoid being charged with a crime. A police department out of Tenaha, TX offered a couple a waiver where they could sign over their property and go free, or could choose to keep their property and face being charged with money laundering and have their children taken by Child Protective Services. Again, this couple had not been charged or convicted of a crime.^{xi} Just as it’s hard to see how civil asset forfeiture in general differs from theft, it’s hard to see how “cash for freedom” practices differ from soliciting a bribe.

What is Restore the Fourth doing about civil asset forfeiture?

We believe that civil asset forfeitures conflict with the Fourth Amendment, which guarantees to “the people”, the right to be “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

There is nothing reasonable about forfeitures. They constitute an arbitrary tax on the poor, who are more likely to hold their assets in tangible forms such as cash, and whose whole net worth may be bound up in a battered Oldsmobile. Security of the kind the Founders envisioned requires better than this miserable, Drug War-era excuse for padding police budgets.

In Massachusetts, which has the worst civil asset forfeiture laws in the nation, [RT4-Boston](#), working with the [Institute for Justice](#) and the [ACLU of Massachusetts](#), has helped to draft and introduce a [civil asset forfeiture reform bill](#), and a smaller bill to [improve civil asset forfeiture reporting](#).^{xii}

ⁱ <https://law.justia.com/cases/federal/district-courts/FSupp/413/1281/1660578/> and <https://law.justia.com/cases/federal/district-courts/FSupp/449/193/1640107/>

ⁱⁱ <https://reason.com/2017/11/27/this-awful-scotus-decision-helped-create/>

ⁱⁱⁱ <https://www.washingtonpost.com/news/wonk/wp/2015/11/23/cops-took-more-stuff-from-people-than-burglars-did-last-year/>

^{iv} <https://ij.org/report/policing-for-profit-3/>

^v <https://ij.org/report/Does-forfeiture-work/>

^{vi} <https://tennesseestar.com/wp-content/uploads/2019/06/Fighting-Crime-or-Raising-Revenue.pdf>

^{vii} https://www.supremecourt.gov/opinions/18pdf/17-1091_5536.pdf

Nationally, we have supported a [bill](#) proposed by Sens. Lee, Paul, Crapo and King to end civil asset forfeiture.^{xiii}

However, in every state, New Mexico-style reforms face stiff headwinds from district attorneys and police unions, whom elected officials find hard to cross. The key element for reformers to understand is that reforms should not create a two-step process, where there is a criminal process for the defendant and then, in civil court, a civil process against the asset. In that situation, an indigent defendant will still have to prove the innocence of their assets, without the help of a public defender. There should instead be one process, in the same court, before the same judge, bound by the same set of procedural rules, which adjudges both the criminal charge before the defendant and whether the asset should be forfeited as a consequence of the criminal conviction. Last, in every case, the government should bear the burden of proving, by clear and convincing evidence, the involvement of the asset in the crime.

^{viii} <https://www.propublica.org/article/police-say-seizing-property-without-trial-helps-keep-crime-down-a-new-study-shows-theyre-wrong>

^{ix} <https://www.newyorker.com/magazine/2013/08/12/taken>

^x <https://www.cnn.com/2014/09/03/us/philadelphia-drug-bust-house-seizure/>

^{xi} <https://www.newyorker.com/magazine/2013/08/12/taken>

^{xii} <https://warrantless.org/>
<https://ij.org/>
<https://www.aclum.org/>
<https://malegislature.gov/Bills/192/HD1970>
<https://malegislature.gov/Bills/192/SD1861>

^{xiii} <https://www.paul.senate.gov/news/senators-paul-king-crapo-and-lee-reintroduce-fair-act-reform-civil-asset-forfeiture-process>