Asset Forfeiture

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Value of Asset Forfeiture Recoveries by U.S. Attorneys

1.

(Minor Changes In Federal Forfeiture Policy Announced By US Justice Department January 2015) On January 16, 2015, the US Justice Department and Attorney General Eric Holder announced a policy change regarding federal forfeiture:

"The Attorney General ordered that federal agency adoption of property seized by state or local law enforcement under state law be prohibited, except for property that directly relates to public safety concerns, including firearms, ammunition, explosives and property associated with child pornography. The prohibition on federal agency adoption includes, but is not limited to, seizures by state or local law enforcement of vehicles, valuables, cash and other monetary instruments. This order is effective immediately and applies to all Justice Department attorneys and components, and all participants in the Department of Justice Asset Forfeiture Program."

The "adoption" policy is a minor aspect of federal forfeiture, and has been practically mooted because of laws in the individual states allowing forfeiture:

"The Justice Department's policy permitting federal agencies to adopt seizures dates from the inception of the Asset Forfeiture Program in the 1980s. The Treasury Department's adoption policy has been part of its Asset Forfeiture Program since its inception in 1993. At the time that these policies were implemented, few states had forfeiture statutes analogous to the federal asset forfeiture laws. Consequently, when state and local law enforcement agencies seized criminal proceeds and property used to commit crimes, they often lacked the legal authority to forfeit the seized items. Turning seized assets over to federal law enforcement agencies for adoption was a way to keep those assets from being returned to criminals. Today, however, every

state has either criminal or civil forfeiture laws, making the federal adoption process less necessary. Indeed, adoptions currently constitute a very small slice of the federal asset forfeiture program. Over the last six years, adoptions accounted for roughly three percent of the value of forfeitures in the Department of Justice Asset Forfeiture Program."

It is also important to note that the January 2015 policy change is quite narrow in scope:

"The new policy applies only to adoptions, not to seizures resulting from joint operations involving both federal and state authorities, or to seizures pursuant to warrants issued by federal courts. The policy does not limit the ability of state and local agencies to pursue the forfeiture of assets pursuant to their respective state laws."

Source:

"Attorney General Prohibits Federal Agency Adoptions of Assets Seized by State and Local Law Enforcement Agencies Except Where Needed to Protect Public Safety," Department of Justice, Office of Public Affairs, Jan. 16, 2015.

http://www.justice.gov/opa/pr/attorney-general-prohibits-federal-agency-...

http://www.justice.gov/sites/default/files/opa/press-releases/attachment...

2. Basic Data

(Definition And Explanation Of Civil Forfeiture And Criminal Forfeiture) "Administrative forfeiture is the process by which property may be forfeited to the United States without judicial involvement. Federal seizing agencies perform administrative forfeitures. Seizures must be based on probable cause. The authority for a seizing agency to start an administrative forfeiture action is found in 19 U.S.C. § 1607.

"Administrative forfeiture can be used to seize and forfeit the following:

• any amount of currency;

• personal property valued at $500,000 or less, including cars, guns, and boats;

• hauling conveyances of unlimited value.

"Real property cannot be forfeited administratively.

"Criminal forfeiture is an action brought as part of the criminal prosecution of a defendant that includes the forfeiture of property used or derived from the crime. If the defendant is convicted, the judge or the jury may find that the property is forfeitable. Forfeiture is limited to the property interests of the defendant and only to property involved in the particular counts on which the defendant is convicted. Only the defendant's interest can be forfeited in a criminal case because criminal forfeiture is part of the sentence in the criminal case.

"Civil forfeiture is a proceeding brought against the property rather than against the person who committed the offense. Civil forfeiture does not require either criminal charges against the owner of the property or a criminal conviction.

"To obtain a federal forfeiture, the Government must prove the forfeiture and the connection between the property and the crime by a preponderance of the evidence. Forfeiture may be applicable to property that is traceable as proceeds of the offense, that facilitated the offense, or that was involved in money laundering. All claims of interest or ownership in the property, such as property owned by third parties, are resolved in a single trial."

Source:

Asset Forfeiture and Money Laundering Section, "Guide to Equitable Sharing for State and Local Law Enforcement Agencies." (Washington DC: U.S. Justice Department, April 2009), Appendix A. pp. 31-32.

http://www.justice.gov/usao/ri/projects/esguidelines.pdf

3.

(Justice Department Policy On Use Of Administrative Forfeiture Rather Than Judicial Forfeiture) "Before 1990, virtually all forfeitures of properties valued at more than $100,000 were conducted judicially. In 1990, however, the law was amended to permit the administrative forfeiture of cash and monetary instruments, without regard to value, and of other property up to a value of $500,000. See 19 U.S.C. § 1607.

"The legislative history of this law makes clear that Congress sought to increase the speed and efficiency of uncontested forfeiture actions and had confidence in the notice and other safeguards built into administrative forfeiture laws. Moreover, the due process protections enacted as part of the Civil Asset Forfeiture Reform Act (CAFRA) of 2000 ensure that the administrative forfeiture laws operate fairly. Accordingly, there is a preference for doing forfeitures administratively where it is possible to do so."

Source:

Asset Forfeiture Policy Manual, US Department of Justice, 2013, Revised March 22, 2014, p. 47.

http://www.justice.gov/criminal/afmls/pubs/pdf/policy-manual-2013rev.pdf

4.

(Annual Value of Assets Forfeited) Between 1989 and 2010, an estimated $12.6 billion was seized by US Attorneys in asset forfeiture cases. The growth rate during that time averaged +19.4% annually. For just 2010 alone, the value of assets seized grew by +52.8% over 2009 and was six times greater than the total for 1989.

Value of Asset Forfeiture Recoveries by US Attorneys

Year	Asset Value	Annual %Chg
1989	$285,000,039	--
1990	451,870,952	+58.6%
1991	596,879,728	+32.1%
1992	325,786,450	-45.4%
1993	385,000,701	+18.2%
1994	418,224,247	+8.6%
1995	464,666,914	+11.1%

1996
377,527,900
-18.8%

1997
570,656,170
+51.2%

1998
280,808,572
-50.8%

1999
535,767,852
+90.8%

2000
312,676,413
-41.6%

2001 [a]
199,043,103
-36.3%

2002
322,246,408
+61.9%

2003
342,862,000
+6.4%

2004 [b]
300,779,267
-12.3%

2005

	313,866,115
	+4.4%
2006	
	841,094,697
	+168.0%
2007	
	1,323,094,697
	+57.3%
2008	
	1,103,810,683
	-16.6%
2009	
	1,129,381,466
	+2.3%
2010	
	1,786,567,692
	+58.2%
TOTAL	
	$12,667,612,066
	+19.4%

Note: "The U.S. attorney is the highest ranking law enforcement official in each of the 94 Federal judicial districts. Each U.S. attorney, under the direction of the U.S. Attorney General, is

responsible for establishing law enforcement priorities, and for carrying out the prosecution, litigation, and appellate responsibilities within their respective districts. Each U.S. attorney also is the chief litigator representing the United States in civil judicial proceedings in the district. U.S. attorneys direct and supervise the work of the assistant U.S. attorneys and staff of the district's offices.

"U.S. attorneys' offices utilize both criminal and civil asset forfeiture laws to strip away, through court proceedings, property that was either used for or derived from criminal activity such as narcotics violations, money laundering, racketeering, and fraud as well as property used to facilitate the commission of certain crimes (Source: Fiscal Year 2007, p. 40). These data represent the combined value of forfeited cash and property recovered through Federal civil and criminal court forfeiture proceedings.

"a) Beginning in fiscal year 2001, data reflect changes resulting from the Civil Asset Forfeiture Reform Act (CAFRA) of 2000, which requires numerous procedural modifications governing criminal and civil asset forfeiture. See the Source: Fiscal Year 2002, for details.

"b) In fiscal year 2008, the Executive Office for United States Attorneys began to use the Justice Management Division, Consolidated Asset Tracking System to report on asset forfeiture cases and related dollar amounts. Data shown for FY 2004-2007 have been revised according to this system. Therefore these data are not directly comparable to data shown for earlier years."

Source:

Maguire, Kathleen, ed., "Sourcebook of Criminal Justice Statistics," (Albany, NY: University of Albany, School of Criminal Justice, Hindelang Criminal Justice Research Center), Table 4.45.2010, last accessed May 18, 2013.

The table cites the following data sources: U.S. Department of Justice, Executive Office for United States Attorneys, United States Attorneys' Annual Statistical Report: Fiscal Year 1993, p. 29; Fiscal Year 2000, p. 73; Fiscal Year 2001, p. 70; Fiscal Year 2002, p. 38; Fiscal Year 2007, p. 41; Fiscal Year 2010, p. 30 (Washington, DC: U.S. Department of Justice).

http://www.albany.edu/sourcebook/pdf/t4452010.pdf

5.

(Funds Forfeited and Held by Government Agencies)

"In 2008, for the first time in history, the U.S. Department of Justice's Assets Forfeiture Fund (AFF) held more than $1 billion in net assets—that is, money forfeited from property owners and now available for federal law enforcement activities after deducting various expenses. A similar fund at the U.S. Treasury Department held more than $400 million in net assets in 2008. By contrast, in 1986, the year after the AFF was created, it took in just $93.7 million in deposits.

"State data reveal that state and local law enforcement also use forfeiture extensively: From 2001 to 2002, currency forfeitures alone in just nine states totaled more than $70 million. This measure excludes cars and other forfeited property, as well as forfeitures from many states that did not make data available for those years, and so likely represents just the tip of the forfeiture iceberg.

"Equitable sharing payments to states have nearly doubled from 2000 to 2008, from a little more than $200 million to $400 million."

Source:

Williams, Marian R.; Holcomb, Jefferson H.; Kovandzic, Tomislav V; and Bullock, Scott, "Policing for Profit: The Abuse of Civil Asset Forfeiture," The Institute for Justice (Arlington, VA: March 2010), p. 7.

http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pd...

6.

(Forfeited Fund Balances) "Total assets, which present as of a specific time the amounts of future economic benefits owned or managed by the AFF/SADF [Assets Forfeiture Fund and Seized Asset Deposit Fund], increased in FY 2008 to $3,120.7 million from $3,056.5 million in FY 2007, an increase of 2.1 percent. If seized assets, which are not yet owned by the government, are backed out, the adjusted assets of the Fund increased to $1,892.2 million in FY 2008 from $1,790.6 million in FY 2007, an increase of 5.7 percent. This is attributable to an increase in forfeited assets in FY 2008 from FY 2007, indicating a strong current and future potential stream of assets flowing into the AFF. The AFF/SADF fund balances with the U.S. Treasury were lower in FY 2008 than FY 2007."

Source:

Office of the Inspector General, Audit Division, US Dept. of Justice, "Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statement Fiscal Year 2008" (Audit Report 09-19, March 2009), p. 6.

http://www.justice.gov/jmd/afp/01programaudit/fy2008/fy2008_afs_report.p...

7.

(Forfeiture and Police Budgets) "For many years, law enforcement agencies around the nation have faced shrinking budgets. [4] Police administrators have been forced to develop creative budgeting strategies, such as securing federal grants and partnering with community foundations. [5] Though it is an enforcement tool, asset forfeiture can assist in the budgeting realm by helping to offset the costs associated with fighting crime. Doing what it takes to undermine the illicit drug trade is expensive and time-consuming. Forfeiture can help agencies target these difficult problems, sometimes without the need to seek additional outside resources to offset their costs."

Source:

Worrall, John L., Center for Problem-Oriented Policing, "Problem-Oriented Guides for Police Response Guides Series No. 7: Asset Forfeiture" (Washington, DC: Office of Community Oriented Policing Services, US Dept. of Justice, November 2008), p. 2.

http://www.popcenter.org/responses/asset_forfeiture/

http://www.popcenter.org/Responses/pdfs/asset_forfeiture.pdf

8.

(Growth in Asset Seizures) "CAFRA [Civil Asset Forfeiture Reform Act] has not reduced the amount of annual forfeitures.

In fact, the value of assets seized annually by the federal government has risen substantially since CAFRA was passed: in 1985, $27 million was deposited into the Department of Justice's Asset Forfeiture Fund. [67] A decade later in 1996, four years before CAFRA and during the period that motivated Rep. Hyde to press for changes, $338 million was deposited into the fund. [68] And in 2008, the fund reported receipts of approximately $1.3 billion, [69] a figure that does not include hundreds of millions of dollars more that federal agencies collected as their share from seizures by state agencies. [70] "

Source:

Moores, Eric, "Reforming the Civil Asset Forfeiture Reform Act," Arizona Law Review (Tuscon, AZ: The University of Arizona, James E. Rogers College of Law, 2009) Volume 51, Issue 3, pp. 783-784.

http://www.arizonalawreview.org/pdf/51-3/51arizlrev777.pdf

9.

(Police Forfeiture Practices Maximize Potential for Revenue) "We did not seek to determine whether forfeiture activities ultimately reduce crime or affect drug-related arrest patterns. However, we found some evidence that police agencies engage in forfeiture practices that maximize their potential for revenue generation. Specifically, we found that significantly fewer equitable-sharing payments are collected in generous forfeiture states, which is consistent with the policing-for-profit allegation put forth by forfeiture's critics (e.g., Blumenson and Nilsen, 1998)."

Source:

Worrall, John L. and Kovandzic, Tomislav V., "Is Policing For Profit? Answers from Asset Forfeiture," Criminology and Public Policy (Columbus, OH: American Society of Criminology, 2008), Vol. 7, No. 2, p. 237.

Abstract: http://www.ncjrs.gov/App/publications/abstract.aspx?ID=245729

10.

(US Justice Dept. Forfeiture Activity, 2004) "The United States Attorneys Offices filed asset forfeiture counts in 3,785 criminal cases, which sought forfeiture as a criminal penalty during Fiscal Year 2004, representing an increase of 9 percent over the prior year. At the end of the fiscal year, there were 5,103 criminal asset forfeiture cases pending, an increase of 16 percent when compared to Fiscal Year 2003. Additionally, 2,235 civil forfeiture actions were filed by the United States Attorneys during the fiscal year, an increase of 4 percent when compared to the prior year. The United States Attorneys also obtained 1,433 civil asset forfeiture judgments in favor of the United States during the year, which represents a 14 percent increase over the prior year."

Source:

US Dept. of Treasury, Dept. of Homeland Security, and Dept. of Justice. "2007 National Money Laundering Strategy" (Washington, DC: 2007), p. 101.

http://www.treasury.gov/resource-center/terrorist-illicit-finance/Docume...

11.

(Amounts Forfeited, 2004) "The United States Attorneys' work on judicial asset forfeitures resulted in an estimated recovery of $390,450,467 in forfeited cash and property during Fiscal Year 2004. This represents an increase of 14 percent over Fiscal Year 2003. Approximately $2,626,415, or less than 1 percent, of the forfeited property was retained for official law enforcement use. Approximately $44,229,624 of asset forfeiture proceeds were applied to restitution in victim-related offenses"

Source:

US Dept. of Treasury, Dept. of Homeland Security, and Dept. of Justice. "2007 National Money Laundering Strategy" (Washington, DC: 2007), p. 101.

http://www.treasury.gov/resource-center/terrorist-illicit-finance/Docume...

12.

(Amounts Received by Local Police Departments, 2002) "Local police departments received an estimated $298 million in money, goods, and property from drug asset forfeitures during 2002. Including both departments with receipts and those without, this was the equivalent of $642 per sworn officer employed. Departments with 100 to 249 officers received the most — $990 per officer (figure 11). Next highest were departments with 250 to 999 officers with $928 per officer. Departments with fewer than 50 officers received the least — about $400 per officer."

Source:

Hickman, Matthew J. and Reaves, Brian A., "Local Police Departments 2003" (Washington, DC: USDOJ, Bureau of Justice Statistics, May. 2006), NCJ 210118, P. 16.

http://www.bjs.gov/content/pub/pdf/so03.pdf

13.

(Amounts Received by Local Police Departments, 2002) "The overall median amount received from drug asset forfeiture programs by local police departments during 2002 was $7,000. By population category, the median amount received ranged from about $1.2 million among departments serving a population of 1 million or more to $2,000 among those serving fewer than 2,500 residents."

Source:

Hickman, Matthew J.. and Reaves, Brian A., "Local Police Departments 2003" (Washington, DC: USDOJ, Bureau of Justice Statistics, May. 2006), NCJ 210118, p. 16.

http://www.bjs.gov/content/pub/pdf/lpd03.pdf

14.

(Amounts Received by Sheriffs' Offices and Officers, 2002) "Fifty-two percent of all sheriffs' offices received money, property, or goods from a drug asset forfeiture program during 2002 (table 32). These sheriffs' offices employed 76% of all sworn personnel. More than 8 in 10 of the sheriffs' offices serving populations of 500,000 or more had drug asset forfeiture receipts.

"During 2002 the overall median amount received from drug asset forfeiture programs by sheriffs' offices was $10,000. By population category, the median amount received ranged from about $1 million among sheriffs' offices serving a population of 1 million or more to $5,000 among those serving fewer than 10,000 residents.

"Overall, sheriffs' offices received an estimated $178 million in money, goods, and property from drug asset forfeitures during 2002. Including both sheriffs' offices with receipts and those without, this was the equivalent of $992 per sworn officer employed. Sheriffs' offices with 1,000 or more officers received the most — nearly $1,700 per officer (figure 11). Next highest were agencies with 250 to 999 officers which received about $1,100 per officer and those with under 25 officers which received about $1,000 per officer. Sheriffs' offices with 25 to 49 officers received the least — $449 per officer."

Source:

Hickman, Matthew J. and Reaves, Brian A., "Sheriffs' Offices 2003" (Washington, DC: USDOJ, Bureau of Justice Statistics, May. 2006), NCJ 211361. p. 16.

http://www.bjs.gov/content/pub/pdf/so03.pdf

15.

(Percentage of Local Police Departments Receiving Forfeited Assets) "Thirty-six percent of all local police departments received money, property, or goods from a drug asset forfeiture program during 2002 (table 32). These departments employed 78% of all local police officers. At least 80% of the departments in each population category of 25,000 or more had drug asset forfeiture receipts."

Source:

Hickman, Matthew J.. and Reaves, Brian A., "Local Police Departments 2003" (Washington, DC: USDOJ, Bureau of Justice Statistics, May. 2006), NCJ 210118, p. 16.

http://www.bjs.gov/content/pub/pdf/lpd03.pdf

16.

(Profitability of Forfeiture) "There can be few components of law enforcement programmes which actually cost nothing. The asset forfeiture provision of the federal law for crop suppression (relating mainly to cannabis in the State of Kentucky), proved to be such a case, costing the United States Government $13.7 million, but yielding a return of $53 million in 1991, or almost $4 in assets seized for every $1 invested by the Drug Enforcement Administration."

Source:

United Nations International Drug Control Program, "Technical Series Report #6: Economic and Social Consequences of Drug Abuse and Illicit Trafficking" (New York, NY: UNDCP, 1998), p. 38.

http://www.unodc.org/pdf/technical_series_1998-01-01_1.pdf

17. **Laws and Policies**

(Constitutional Concerns) "Today's civil asset forfeiture system also raises several constitutional issues. First, the potential for law enforcement to operate independently of the political process may violate the Constitution's Appropriations Clause. [154] Second, a federally created forfeiture tool called "equitable sharing" effectively permits state and local law enforcement to bypass states' attempts to mandate how proceeds are disbursed, raising federalism concerns. [155] Finally, the increasingly popular use of waivers—whereby the police offer property owners the choice of avoiding criminal charges in exchange for their property—means owners are deprived of the chance to challenge the forfeiture in a proceeding. [156] Agencies that use waivers bypass civil asset forfeiture laws and deprive owners of the protections they provide, raising serious due process concerns."

Source:

Moores, Eric, "Reforming the Civil Asset Forfeiture Reform Act," Arizona Law Review (Tuscon, AZ: The University of Arizona, James E. Rogers College of Law, 2009) Volume 51, Issue 3, pp. 792-793.

http://www.arizonalawreview.org/pdf/51-3/51arizlrev777.pdf

18.

(Mechanisms for Forfeiture) "Civil forfeiture can occur via three mechanisms:

"1. Summary forfeiture occurs when property is summarily seized. Property subject to summary forfeiture is typically contraband, such as illegal narcotics and drug paraphernalia.

"2. Administrative forfeiture is usually commenced against property valued at less than $500,000, or against cash of any value. Administrative proceedings are conducted by the seizing agency; the government initiates a forfeiture action and will take ownership of the property if no one steps forward to contest the forfeiture.§ Real property is not subject to administrative forfeiture, even if it is valued at less than $500,000. Probable cause is the requisite standard in administrative forfeiture (as it is roughly analogous to preponderance of evidence).

"3. Civil judicial forfeiture proceedings occur before a judge. It is akin to a trial. If the value of the property in question

exceeds $500,000 (or a claim of ownership is filed or real property is involved), this is the mechanism of choice."

Note : This source contains several sections that may be of interest, including:

- Appendix B: Disposition Statutes by State (p. 37)
- Appendix C: National Code of Professional Conduct for Asset Forfeiture (p. 39)
- Appendix D: National District Attorneys Association Guidelines for Civil Asset Forfeiture (p. 41)

Source:

Worrall, John L., Center for Problem-Oriented Policing, "Problem-Oriented Guides for Police Response Guides Series No. 7: Asset Forfeiture" (Washington, DC: Office of Community Oriented Policing Services, US Dept. of Justice, November 2008), p. 4.

http://www.cops.usdoj.gov/files/RIC/Publications/e1108-Asset-Forfeiture....

19.

(Forfeiture Reform) "Forfeiture was especially controversial during the 1980s and 1990s (Hyde, 1995; Levy, 1996), but in 2000, the Civil Asset Forfeiture Reform Act (CAFRA) (Pub. L. No. 106-185) was passed. One major feature of the legislation was improved: due-process protections for property owners. And before CAFRA in 2000, the burden of proof fell on property owners. This process all changed with CAFRA. CAFRA did not, however, alter the burden of proof for civil forfeiture proceedings. It just shifted it from property owners to the government, and it did not change the law governing the disposition of forfeited assets (Worrall, 2004)."

Source:

Worrall, John L. and Kovandzic, Tomislav V., "Is Policing For Profit? Answers from Asset Forfeiture," Criminology and Public Policy (Columbus, OH: American Society of Criminology, 2008), Vol. 7, No. 2, p. 224.

http://www.ncjrs.gov/App/publications/abstract.aspx?ID=245729

20.

(Legislative History) "In 1970, Congress passed the Comprehensive Drug Abuse Prevention and Control Act. [45] This Act included a provision authorizing the government to seize drugs, drug manufacturing and storage equipment, and items used to transport drugs. [46] Later, Congress passed legislation broadening forfeiture laws to include proceeds from drug transactions [47] and real property. [48] Then in 1984, Congress passed the Comprehensive Crime Control Act, further expanding federal prosecutors' ability to seize assets. [49]

"After more than twenty years of unbridled police power in the area of asset forfeitures, critics, led by Representative Henry Hyde, the former chairman of the House Judiciary Committee, began calling for reforms."

Source:

Moores, Eric, "Reforming the Civil Asset Forfeiture Reform Act," Arizona Law Review (Tuscon, AZ: The University of Arizona, James E. Rogers College of Law, 2009) Volume 51, Issue 3, pp. 782-783.

http://www.arizonalawreview.org/pdf/51-3/51arizlrev777.pdf

21.

(Forfeiture in Drug Cases) "The statutes pertaining to drug offenses authorize the forfeiture of more than just the proceeds of the offense. Under 21 U.S.C. §§ 853(a) and 881(a) (criminal and civil forfeiture, respectively), a court may order the forfeiture of both the drug proceeds and any real or personal property used to commit, or to facilitate the commission of, the drug offense. These are the statutes that a federal law enforcement agency or federal prosecutor would use to take a car, boat, gun, airplane, or farm, away from a drug dealer.

"Facilitating property is defined in the case law to mean any property that "makes the prohibited conduct less difficult or more or less free from obstruction or hindrance." *United States v. Schifferli* , 895 F.2d 987, 990 (4th Cir. 1990) (Facilitation occurs when the property "make[s] the prohibited conduct less difficult or more or less free from obstruction or hindrance."); *United States v. Bornfield* , 145 F.3d 1123, 1135 (10th Cir. 1998) (citing *Schifferli*); *United States v. Puche* , 350 F.3d 1137, 1153 (11th Cir. 2003) (citing Bornfield)). The drug cases provide a plethora of examples of cases where houses, businesses, and even medical licences, have been forfeited as facilitating property."

Source:

Cassella, Stefan D., "Overview of Asset Forfeiture Law in the United States," United States Attorneys' Bulletin, (Columbia, SC: November 2007), p. 11.

http://www.justice.gov/usao/eousa/foia_reading_room/usab5506.pdf

22.

("Reverse Stings") "The advent of a now common police tactic, called the “reverse sting,” illustrates the shift in priorities from crime control to funding raids. [107] In a reverse sting, an officer attempts to sell drugs to an unsuspecting buyer. [108] The method permits the police to seize the buyer’s cash rather than a seller’s drugs, which have no value to the agency. [109] "

Source:

Moores, Eric, "Reforming the Civil Asset Forfeiture Reform Act," Arizona Law Review (Tuscon, AZ: The University of Arizona, James E. Rogers College of Law, 2009) Volume 51, Issue 3, p. 788.

http://www.arizonalawreview.org/pdf/51-3/51arizlrev777.pdf

23.

(What May Be Financed) "In Fiscal Year (FY) 2008, monies were available under a permanent indefinite appropriation to finance the following:

(1) The operational costs of the forfeiture program, including handling and disposal of seized and forfeited assets, and the execution of legal forfeiture proceedings to perfect the title of the United States in that property.

(2) The payment of innocent third party claims.

(3) The payment of equitable shares to participating foreign governments and state and local law enforcement agencies.

(4) The costs of ADP [Automatic Data Processing] equipment and ADP support for the Program.

(5) Contract services in support of the Program.

(6) Training and printing associated with the Program.

(7) Other management expenses of the Program.

(8) Awards for information leading to forfeiture.

(9) Joint Federal, state, and local law enforcement operations.

(10) Investigative expenses leading to seizure."

Source:

Office of the Inspector General, Audit Division, US Dept. of Justice, "Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statement Fiscal Year 2008" (Audit Report 09-19, March 2009), p. 5.

http://www.justice.gov/jmd/afp/01programaudit/fy2008/fy2008_afs_report.p...

24.

(Standards and Burden of Proof) "In 2000, Congress passed the *Civil Asset Forfeiture Reform Act* , which now requires law enforcement agencies to demonstrate by 'a preponderance of the evidence,' rather than merely a showing of 'probable cause,' that the property to be seized is linked to criminal activity. Moreover, the government now has the burden of proving that property was involved in a crime, rather than the previous standard under which the owner was required to prove that the property was not the product of criminal involvement."

Source:

Mauer, Marc and King, Ryan S., "A 25-Year Quagmire: The War on Drugs and Its Impact on American Society" The Sentencing Project (Washington, DC: September 2007), p. 6.

http://www.sentencingproject.org/doc/publications/dp_25yearquagmire.pdf

25.

('Equitable Sharing') "In 1984, Congress passed the Comprehensive Forfeiture Act, which vastly expanded the federal government's forfeiture powers. [169] The Act also created 'equitable sharing,' a process by which federal agencies 'adopt' forfeiture cases from state law enforcement agencies. [170] Equitable sharing is used when federal forfeiture is more favorable to state and local police, which usually occurs when state law mandates that law enforcement keep a smaller amount than that available under equitable sharing. [171] Perhaps of more concern is when it is used to skirt state laws that either prevent forfeiture in a particular case, or direct that all or a portion of the proceeds be deposited into non-law enforcement funds. [172] The federal agency keeps 20% of the recovered amount, while the remainder is returned to the state or local entity that brought the action. [173] "

Source:

Moores, Eric, "Reforming the Civil Asset Forfeiture Reform Act," Arizona Law Review (Tuscon, AZ: The University of Arizona, James E. Rogers College of Law, 2009) Volume 51, Issue 3, p. 794.

http://www.arizonalawreview.org/pdf/51-3/51arizlrev777.pdf

26.

(Law Enforcement Use of Waivers and Contracts to Avoid Courts for Forfeitures) "In a growing and disturbing trend among state and local police, some law enforcement agencies now use contracts and waivers to obtain property, a practice that permits them to avoid forfeiture proceedings altogether. Generally, owners waive any interest in their property in exchange for the agency's promise not to pursue criminal charges. This practice raises several concerns, the most serious of which is its complete disregard for the procedural guarantees current forfeiture legislation provides."

Source:

Moores, Eric, "Reforming the Civil Asset Forfeiture Reform Act," Arizona Law Review (Tuscon, AZ: The University of Arizona, James E. Rogers College of Law, 2009) Volume 51, Issue 3, p. 795.

http://www.arizonalawreview.org/pdf/51-3/51arizlrev777.pdf

27.

(History of Civil Forfeiture) "Unlike a criminal proceeding in which legal action is brought against an individual, in civil forfeiture, the government proceeds against the property directly, as if the property somehow acted to assist in the commission of a crime. It is a scheme based on 18th-century maritime law that permitted courts to obtain jurisdiction over property when it was virtually impossible to obtain jurisdiction over the property owners—pirates, for example—guilty of violating the law.

"Although civil forfeiture remained a relative backwater in American law for many years, modern civil forfeiture expanded greatly during the early 1980s as governments at all levels stepped up the war on drugs. No longer tied to the practical necessities of enforcing maritime law, the forfeiture power now applies to a broad range of crimes. Almost all states and the federal government have civil forfeiture laws, and Georgia's is among the worst."

Source:

Erin Norman and Anthony Sanders, "Forfeiting Accountability: Georgia Law Enforcement's Hidden Civil Forfeiture Funds" (Institute for Justice: Arlington, VA, March 2011), p. 4.

http://www.ij.org/images/pdf_folder/other_pubs/forfeitingaccountabilityf...

28.

(Standards of Proof) "In a civil forfeiture action, the government need only prove by a preponderance of evidence that the property is subject to forfeiture. Criminal forfeiture, which is apparently much less common than civil forfeiture (Hyde, 1995), usually accompanies criminal charges and is more difficult because of the proof-beyond-a-reasonable-doubt standard (Warchol, Payne, and Johnson, 1996:53-54). Civil forfeiture may thus be pursued more frequently because of the lower standard of proof. In fairness, however, criminal forfeiture may be preferred sometimes because restrictions exist on divulging the amount of assets forfeited (Clingermayer, Hecker, and Madsen, 2005)."

Source:

Worrall, John L. and Kovandzic, Tomislav V., "Is Policing For Profit? Answers from Asset Forfeiture," Criminology and Public Policy (Columbus, OH: American Society of Criminology, 2008), Vol. 7, No. 2, p. 223.

Abstract: http://www.ncjrs.gov/App/publications/abstract.aspx?ID=245729

29.

(Forfeiture Shaping Law Enforcement Practices) "During the past decade, law enforcement agencies increasingly have turned to asset seizures and drug enforcement grants to compensate for budgetary shortfalls, at the expense of other criminal justice goals. We believe the strange shape of the criminal justice system today—the law enforcement agenda that targets assets rather than crime, [20] the 80 percent of seizures that are unaccompanied by any criminal prosecution, [21] the plea bargains that favor drug kingpins and penalize the "mules" without assets to trade, [22] the reverse stings that target drug buyers rather than drug sellers, [23] the overkill in agencies involved even in minor arrests, [24] the massive shift towards federal jurisdiction over local law enforcement [25] —is largely the unplanned by-product of this economic incentive structure."

Source:

Blumenson, E. & and Nilsen, E., "Policing for Profit: The Drug War's Hidden Economic Agenda," University of Chicago Law Review, 65: 35-114 (1998, Winter).

http://lsr.nellco.org/cgi/viewcontent.cgi?article=1008&context=suffolk_f...

30. **Sociopolitical Research**

(Law Enforcement Profiteering) "Results from the present study demonstrate that all three factors of state forfeiture law that we studied - proceeds to law enforcement, innocent owner burden, and standard of proof - impact the extent to which state and local law enforcement agencies choose to pursue federal equitable sharing. Moreover, when state laws make forfeiture more difficult *and* less rewarding, agencies are even more apt to turn to the federal government's easier and more generous forfeiture procedures."

Source:

Holcomb, Jefferson E.; Kovandzic, Tomislav V.; and Williams, Marian R., "Civil asset forfeiture, equitable sharing, and policing for profit in the United States," Journal of Criminal Justice (Amsterdam, The Netherlands: Elsevier, March 23, 2011) Volume 39, Issue 2, p. 282.

http://walker-foundation.org/Files/walker/2011/AFjournalofcriminaljustic...

31.

(Police Profit-Seeking) "In general, however, the powerful incentives for profit-seeking found within forfeiture current laws is criticized as encouraging inappropriate enforcement activities and detracting from the proper role of law enforcement within a democratic state. The dependency of the police on public resources for their operations is an important check on police power. Self-generating revenues by the police through forfeiture potentially threatens the ability of popularly elected officials to constrain police activities. Perhaps such concerns partially explain the differences in state laws. If the legislators and the public wished for forfeiture to be very easy and rewarding to law enforcement, every state would have low standards of proof, limited innocent owner protections, and all proceeds would go exclusively to the police."

Source:

Holcomb, Jefferson E.; Kovandzic, Tomislav V.; and Williams, Marian R., "Civil asset forfeiture, equitable sharing, and policing for profit in the United States," Journal of Criminal Justice (Amsterdam, The Netherlands: Elsevier, March 23, 2011) Volume 39, Issue 2, p. 283.

http://walker-foundation.org/Files/walker/2011/AFjournalofcriminaljustic...

32.

(Police Profiteering) "In sum, the present study found that law enforcement agencies in jurisdictions with more restrictive or less rewarding state forfeiture laws receive greater forfeiture proceeds through federal equitable sharing. These results provide compelling evidence that law enforcement agencies consider the legal burdens and financial rewards of their own state law compared to those under federal equitable sharing in determining how to process asset seizures. Whether such actions are viewed as appropriate, innovative, and utility-maximizing police behavior or something more problematic is a matter for the public and policy-makers to assess. Any discussion about these results, however, certainly raises political and normative questions about the independence of law enforcement from public oversight and the budgetary process as well as the appropriate role and limits of asset forfeiture by law enforcement."

Source:

Holcomb, Jefferson E.; Kovandzic, Tomislav V.; and Williams, Marian R., "Civil asset forfeiture, equitable sharing, and policing for profit in the United States," Journal of Criminal Justice (Amsterdam, The Netherlands: Elsevier, March 23, 2011) Volume 39, Issue 2, p. 283.

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