



## Taking Contraband Without Taking Our Liberties: Civil Asset Forfeiture Reform in Texas

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### Key Points

- Civil asset forfeiture allows the government to take your property without having charged you with a crime.
- In Texas, an owner must assert and establish their innocence to recover their property.
- Law enforcement agencies can collude with the federal government to avoid state protections.

### Introduction

In October of 2007, Roderick Daniels was traveling through Tenaha, Texas on US Route 59. Just outside of the city, he was pulled over for allegedly traveling 37 miles-per-hour in a 35 miles-per-hour zone. The officer then asked Mr. Daniels if he was carrying any cash. The very aim of the trip being to purchase a car, he revealed to the officer that he was carrying a substantial amount of cash; about \$8,500. Little did Mr. Daniels know he was about to be become a textbook case of civil asset forfeiture abuse in Texas.

The officer promptly placed Mr. Daniels under arrest and transported him to the jail. It was here that Daniels was given an ultimatum: sign pre-notarized documents agreeing to forfeit the money and jewelry found in his car, or be charged with money laundering. Scared and far from home, Mr. Daniels complied.<sup>1</sup>

Ron Henderson and Jennifer Boatright had a similar experience with the Tenaha Police on US Route 59. While traveling through the area with their two children, they were pulled over and questioned as to whether they were carrying cash. They, too, were looking to purchase a used car and were carrying over \$6,000. The officers began searching the car, turning up no contraband. Neither officer issued a citation for the alleged offense—driving in a left-hand turn lane—and Ms. Boatright and Mr. Henderson were told that they could either sign the same documents relinquishing all ownership interest in the cash or face money laundering charges. In addition, they were told that challenging the charge would result in them being placed in custody with their two small children being

placed in foster care. The couple signed over their property rather than face the dissolution of their family.<sup>2</sup>

Incidents such as these, while abhorrent, are not uncommon. In Tenaha alone, it is estimated that between 2006 and 2008 the police seized \$3 million worth of property from motorists. Over 150 of these seizure cases are believed to be invalid.<sup>3</sup> With only 923 residents and two sworn police officers,<sup>4</sup> these enforcement actions represent a windfall to the Tenaha and Shelby County government and have the potential to underwrite a significant portion of their budget.

Absent proper procedural safeguards, the practice of forfeiture is extremely susceptible to abuse. Unfortunately, Texas ranks amongst the worst in the nation in protecting its citizens from such abuses.<sup>5</sup> It is easy for officials to cast too wide a net given Texas' broad statutes that contain few restrictions on civil asset forfeiture. Moreover, Texas also permits its state and local law enforcement authorities to be compensated for cooperation with federal law enforcement agencies in seizing property, thereby compromising state sovereignty by partially surrendering the police power that is a core state constitutional function.

This report summarizes the practice of civil asset forfeiture nationally and in Texas specifically. The breadth of the practice is discussed, and avenues for reform are laid out. Abusive forfeiture practices are one of the most pernicious invasions of personal liberty perpetrated in this modern age. However, there are policies available that can blunt misuse of this power.

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### **Forfeiture in Law Enforcement**

“Forfeiture” is a mechanism by which the state obtains ownership and control of an individual’s property, usually via legal convention following an alleged crime. The property is often held by the government while the case is pending.

The most well-known form of asset forfeiture used in law enforcement is criminal forfeiture. Criminal forfeiture occurs when law enforcement agents make an arrest and confiscate property that ostensibly was used in the commission of a crime or whose possession came about as the fruit of a criminal act. After a finding of guilt or guilty plea, ownership of the property is fully turned over to the state.

This property is usually liquidated through a police auction or, in the event an item could be of direct value to the police, repurposed for their use. It is not uncommon to see a high-end car seized from a drug dealer being outfitted with lights and siren and used as an interceptor. This form of forfeiture is laudable. Among the benefits: 1) it forces law-breakers to subsidize law enforcement through their ill-gotten gains, and 2) the full transfer of ownership interest occurs after a guilty verdict or plea, thereby preserving the due process of the criminal court.

The practice of civil asset forfeiture operates in a more ambiguous area of law. Unlike legal action taken against a person under the allegation of criminal conduct, and all the procedural safeguards that entails, civil forfeiture targets the property itself, not the owner, and can occur regardless of whether any criminal charges are brought forth. These actions are a form of *in rem* proceedings, or accusations against property. This legal fiction of sentient property has led to nonsensical

case names such as *United States vs. \$124,700 in US Currency*, *United States vs. One Pearl Necklace*, and *.39 Acres vs. the State of Texas*.

The tradition of *in rem* jurisdiction dates back to the medieval common law practice of *deodand* seizures. A *deodand*, strictly speaking, is “an instrument causing another person’s death.”<sup>6</sup> Kings were able to, without conviction of the property owner, seize the item in order to provide restitution to the slain person’s family. The prevailing superstition of the time was that such objects could possess the requisite capacity and sentience to deliberately harm an individual and therefore could be directly “punished” by being seized.<sup>7</sup> The practice was relied upon heavily in the early days of the United States, specifically in the enforcement of customs duties. Funding nearly the entirety of the federal government in its infancy, agents were empowered to seize property for which the proper tax had not been paid. Upheld in early Supreme Court cases, it was not until after the Civil War that civil asset forfeiture was applied outside of the maritime law.\*

In a criminal case, the government must prove their case against the accused individual beyond a reasonable doubt. However, having no such implicit protections, the burden of proof to seize property during civil forfeiture proceedings is often much lower. Most states, as well as the federal government, employ a “preponderance of the evidence” standard, meaning that it is more likely than not what the seizing agency says is true as determined by a judge. A handful of states have lower standards, while others have increased procedural safeguards to the level tantamount to a criminal case.

In some forfeiture cases, seizures have been made without an allegation of criminal conduct, much less one proven before a court, and in the complete absence of any corroborating evidence. For example, the Internal Revenue Service has recently made several high-profile “structuring” seizures. Pursuant to the Currency and Foreign Transactions Reporting Act of 1970 (or the “Bank Secrecy Act”), banks are required to report all deposits of negotiable instruments in excess of \$10,000 in aggregate in one day into a single account. Deposits of this size, the government alleges, can be indicative of tax evasion or money laundering and, therefore, need to be tracked. As a

\* For a full discussion of the evolution of civil forfeiture practices from ancient history to the present including relevant discussion of rationale, please see Boudreaux & Pritchard’s “Civil Forfeiture and the War on Drugs: Lessons from Economics and History” from the *San Diego Law Review* (1996).

result, Congress has made it illegal to “structure” numerous deposits so that they fall underneath the reporting requirement. However, since Congress eliminated ‘willfulness’ as an element of the crime, a pattern of suspicious transactions alone is sufficient for prosecution or, as will be discussed here, to have someone’s property seized. In one such case, a Michigan grocery store owners’ insurance policy covered only up to \$10,000 worth of cash loss, leading them to deposit the cash-on-hand upon approaching the insurance cap. Seeing this as an attempt to evade the deposit threshold, the IRS seized the grocery proprietors’ bank account and emptied it of its balance that totaled over \$35,000.<sup>9</sup> After facing substantial media scrutiny and *pro bono* litigation by the Institute for Justice, the IRS eventually agreed to return the money. However, this came nearly a year after the seizure with no charges ever having been filed.<sup>10</sup>

This has given rise to the allegation of “policing for profit,” or engaging in law enforcement activities based solely on the potential payouts of forfeited property.<sup>11</sup> There is a good deal of evidence to support the existence of this practice. A survey reporting the responses of 770 law enforcement agencies found that nearly 40 percent viewed the proceeds of civil forfeiture as a necessary supplement to their budgets.<sup>12</sup> This suggests that law enforcement administration may find themselves in a situation where pecuniary departmental interests overshadow their deference to substantive and procedural law. This is further substantiated by attempts to circumvent state safeguards via equitable sharing practices involving the federal government, as seen below. This is echoed by accounts of forfeited funds being spent on exotic travel and recreational items.

Another problematic aspect of civil asset forfeiture is that the legal costs associated with recovering one’s property often far exceed the value of the property itself. Since the seizing agency is acting under the color of law, parties who have been victims of this abuse generally may not recover legal fees or punitive damages, such as those that can be part of the relief and remediation under a federal civil rights action brought under §1983.<sup>13</sup> For those without deep pockets, they may not be able to afford a lawyer, and the inability to recover damages makes it difficult to find counsel willing to work on a contingency fee. Accordingly, asserting one’s presumption of innocence and rights to property ownership can often be contingent on receiving *pro bono* support from a public in-

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terest law firm. Even for those with personal resources, when the value of the property exceeds the legal expenses, there is little incentive to incur the cost of spending time and money to recover property that is worth less than the opportunity cost involved.

There has been some passing legislative interest in limiting the use of the civil asset forfeiture. The United States Congress recognized these problems in 2000 when it passed the Civil Asset Forfeiture Reform Act, or CAFRA. Fundamentally a milquetoast set of reforms, CAFRA did manage to reestablish the “innocent owner” affirmative defense as federal policy (previously invalidated in *Bennis v. Michigan*),<sup>14</sup> though the burden of proof both in the federal government and most states remained on the owner of the property.<sup>15</sup> As illustrated anecdotally above and quantitatively below, however, forfeiture practices seem to have only become more problematic since CAFRA’s passage.

### Equitable Sharing: The 21st Century “Silver Platter”

Perhaps even more caustic to liberty is equitable sharing; a practice through which federal agents and unscrupulous state or local law enforcement officials can collude to sidestep state law that protects citizens from forfeiture abuse.

In 1868, the United States Congress passed the 14th Amendment to the Constitution. As the most philosophically far-reaching of the Reconstruction Amendments, the 14th Amendment guaranteed American citizens, amongst other rights, equal protection under law and reaffirmed the 5th Amendment’s due process provision. The latter, in this context, has been interpreted by the courts as applying directly to state law. This has paved the way for the other individual

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liberty protections against government action set forth in the Constitution, namely the Bill of Rights, to be applied to state-level actors as well.

This has led to some novel legal theories that capitalize on parallel federal and state criminal jurisdiction. In the time between the 4th Amendment being given “teeth” via the exclusionary rule in *Weeks v. United States* and incorporated to the states in *Mapp v. Ohio*, it was not uncommon for cooperating law enforcement agencies to circumvent procedural safeguards on evidence gathering. Unable to use the evidentiary fruits of an unconstitutional search in criminal prosecutions, federal law enforcement agencies would rely on state law enforcement—not yet bound by the exclusionary rule—to make dubious searches and supply the evidence to federal officials. This end-around was known as the “silver platter doctrine,” referencing the manner in which the evidentiary material was served up to the prosecuting authorities.

The doctrine continued until 1960, when the U.S. Supreme Court’s ruling in *Elkins v. United States* explicitly forbade the practice. The dissenting justices argued that suppressing the silver platter doctrine would represent an affront to the principles of federalism and deference to the several states’ responsibility to establish and enforce criminal law. Of course, allowing the doctrine would wholly abdicate the procedural safeguards guaranteed to all United States citizens to the whims of state-level bureaucrats. This holding was bolstered by *Mapp* four years later, a ruling that incorporated the full array of 4th Amendment protections to the states.

A similar practice has emerged in the area of civil asset forfeiture. The practice of “equitable sharing” is a mechanism whereby property seized by federal law enforcement agencies is shared, in part or in whole, with cooperating state and local agencies. This can equate to as much as 80 percent of the total value of seized property being shared.

Ironically, equitable sharing is arguably the largest threat to the principles of federalism, individual liberty notwithstanding, since it allows federal authorities and local law enforcement agencies to circumvent state law. Accordingly, federal seizures have occurred in which no state law was being violated. For example, California medicinal marijuana dispensaries, fully in compliance with state law on the matter, have had their locations raided and property seized for being in violation of federal laws.<sup>16</sup> With the perverse incentives plainly apparent, local agencies can be coopted into enforcing federal statutes that the constituents of their state have not accepted, and enriching the agency doing so.

In addition, many states have attempted to implement procedural safeguards against forfeiture abuse, some even requiring the same burden of proof being placed on the government as in a criminal trial. However, through joint investigative forfeitures, state/local and federal agencies may cooperate in an investigation and seize property under the less-restrictive federal standard. This property would still be liquidated and its value shared with the state/local agency even if the state had adopted laws and procedures that protect its citizens against this practice.

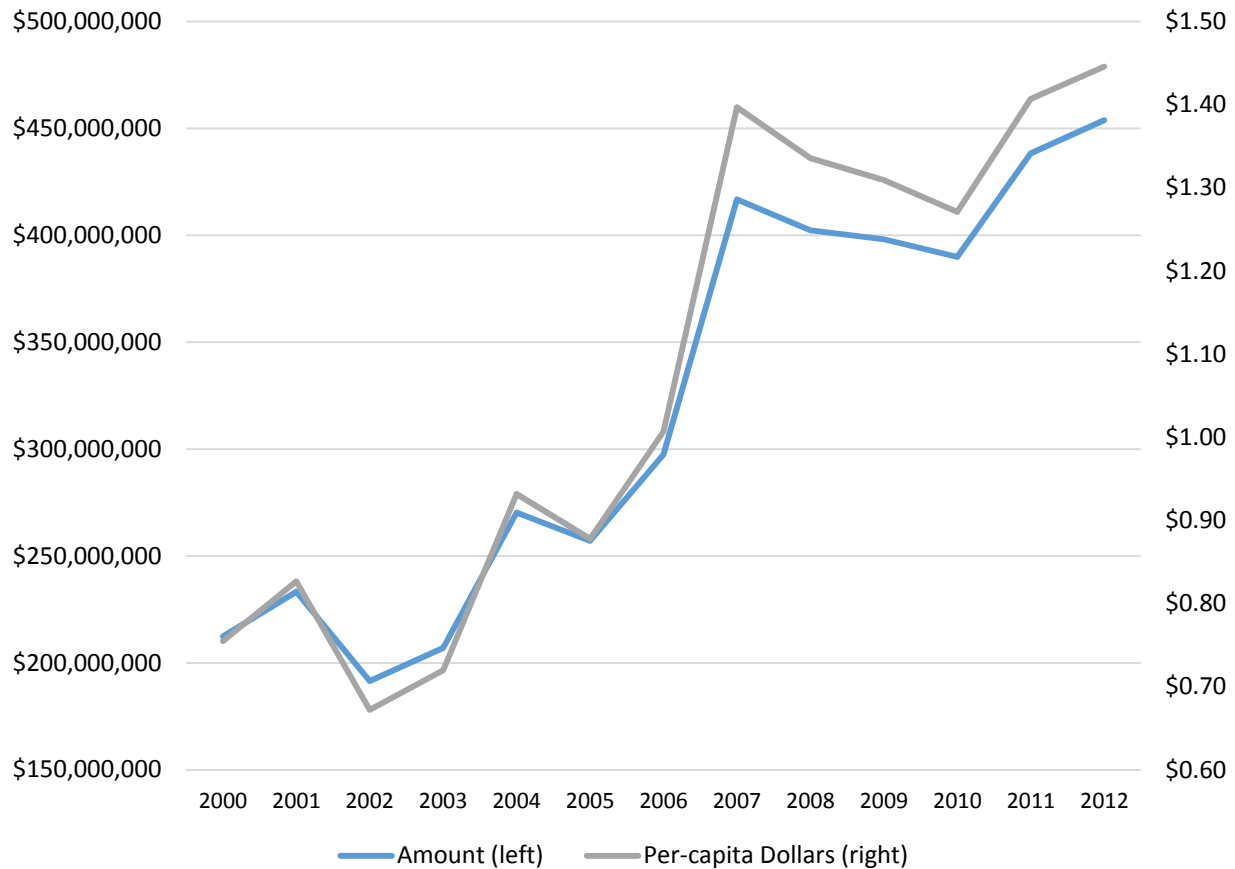
There is a growing amount of quantitative support to the idea that state and local law enforcement agencies are using equitable sharing agreements to circumvent state-imposed safeguards. Using data from both the Law Enforcement Management and Administrative Statistics (LEMAS) survey as well as federal forfeiture data, a 2011 study found that local law enforcement agencies were more likely to use equitable sharing as a forfeiture mechanism if the state had procedural safeguards or a higher burden of proof.<sup>17</sup>

### Forfeiture as a National Phenomenon

Estimates of the pervasiveness of civil asset forfeiture are difficult to come by. The bulk of forfeiture occurs at the local level, and few states have structured reporting systems where all entities from small villages to sprawling cities must report the amounts seized and liquidated. Further, those that do require reports often allow for the aggregation of the value of *all* forfeited property, making it impossible to delineate legitimate criminal forfeiture from civil asset forfeiture from administrative forfeiture and so on.

One method to capture the pervasiveness of forfeiture nationally is to consider responses to the LEMAS survey. The

### National Equitable Sharing Payments



survey has been given intermittently for the past three decades, and what is being measured has changed in nearly every version. Regardless of these issues, responses can be tallied to illustrate how widespread the practice of forfeiture is at the local level.

In 2007, the last year the survey was issued, state and local law enforcement agencies nationwide indicated that they had seized an estimated total of \$825,468,951 worth of assets. The primary driver behind this figure was the \$718,180,370 of drug-related seizures, a figure that would span the range of actions from legitimate criminal forfeitures to pretextual civil forfeiture. The previous survey, conducted in 2003, reflected that self-reported drug-related seizures totaled \$415,350,136,<sup>18</sup> an increase of nearly 73 percent over the four year interim, while drug use across a variety of metrics—most notably in the percentage people having ever used marijuana, cocaine, crack-cocaine, heroin, or methamphetamines, the most highly-trafficked drugs—has markedly decreased over the same time period.<sup>19</sup> “Other forfeiture programs” contrib-

uted \$101,909,366, and seizures of property relating to illegal gambling amounted to \$5,379,215 in 2007.<sup>20</sup>

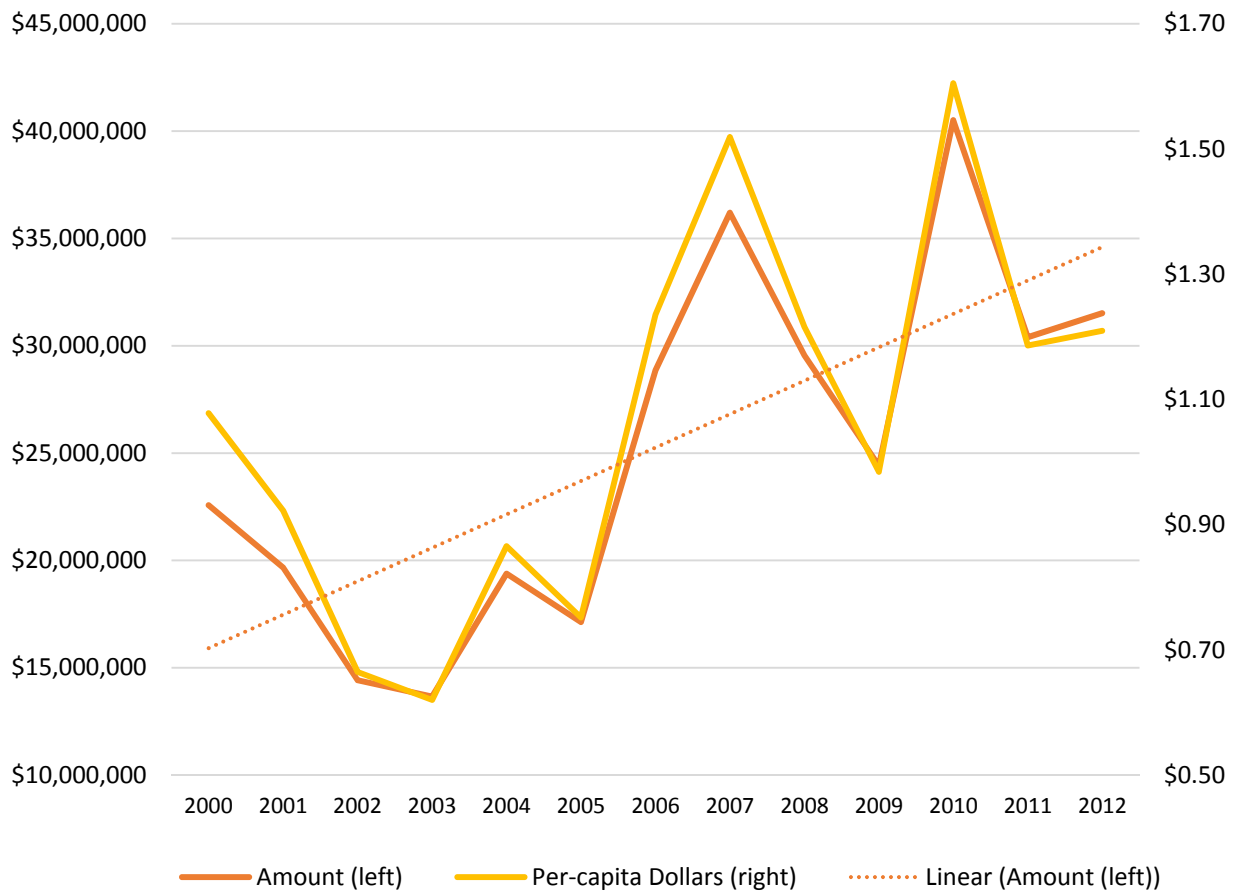
The use of equitable sharing has also grown immensely in recent years. In 2000, federal law enforcement agencies made \$212,438,950 in equitable sharing payments to state and local entities. In 2012, that number has more than doubled to \$453,814,470. To put this in perspective, this equates to just over 75 cents per person nationwide in 2000 and nearly \$1.45 per person in 2012.<sup>21</sup>

### Forfeiture in Texas

In Texas, the legal standard for civil asset forfeiture is preponderance of the evidence, meaning that the seizing agency need only convince a judge that their account of the facts of the case (and implicit criminal conduct) is more likely than not to be true.<sup>22</sup> Of course, this standard only applies if the aggrieved party attempts to assert their ownership interests. Otherwise, the forfeiture proceeds uncontested.



### Equitable Sharing Payments to Texas



In *Policing for Profit*, a 2010 nationwide report by the Institute for Justice, Texas was given an overall grade of “D-,” which includes a “D” for existing forfeiture protections and the amount of proceeds that directly benefit Texas law enforcement and an “F” for the state’s overreliance on equitable sharing.<sup>23</sup>

#### How Much is Going On?

The prevalence of forfeiture in the State of Texas has followed the national trend. Both the sum value and per-capita dollars of seized property have risen rapidly while triggering events, as measured in both official and self-report data, have been plummeting. Of the \$825 million reported above, \$49 million were seizures reported by the 200 responding Texas agencies.<sup>24</sup>

Equitable sharing payments have followed suit. In 2001, Texas received \$19,668,285 from the federal government compared to \$31,520,522 in 2012. This trend holds even in light of Texas’ skyrocketing population, growing from 92 cents to \$1.21 per person for the same years, respectively. From 2000 through

2006, Texas received an average of 88 cents each year per capita, while this increased to almost \$1.29 per person the period between 2007 and 2012, showing persistence even in the volatile data.<sup>25</sup>

#### What are Proceeds Being Spent On?

Data on local-level expenditures are unavailable. While the Attorney General’s Office mandates that all law enforcement entities fill out a reporting form, this only pertains to items seized under Chapter 59 of the Code of Criminal Procedure.<sup>26</sup> As previously discussed, this would be limited to any items or contraband seized and/or liquidated under criminal forfeiture laws and would ignore property seized under civil asset forfeiture proceedings. In addition, while the reporting form does ask about potentially frivolous expenditures like travel and “buy money,” it would not account for whether the money spent on these items were truly pursuant to legitimate law enforcement objectives.

However, data on state-level expenditures for over the past five years (2008–2013) for Texas are available. Upon request the Legislative Budget Board (LBB)—Texas’ legislature-affiliated research and evaluation body—has provided an enumerated list of Department of Public Safety’s (DPS) expenditures made with the assets held in the forfeiture fund. Granted, this is but one agency and not locally-based, but items on the expenditure report are not wholly dissimilar to what local agencies spend forfeiture money on: \$300 thousand on aerial surveillance equipment; \$585 thousand on in-car video equipment (with another \$1 million on replacement); \$12.25 million over the five-year span on aircraft—each a legitimate law enforcement tool. Other expenditures, such as \$230 thousand on “covert surveillance equipment, a quarter-million dollars spent on a “Bearcat” armored vehicle, and almost \$300 thousand on cellular phone tracking equipment could have legitimate law enforcement uses.<sup>27</sup>

However, there is a troubling trend apparent in the data. The \$9.6 million DPS has paid in expenditures for the recruiting class of Fiscal Year 2011 and 2013 represents planned, operational expenses that should have been provided for by general appropriations.<sup>28</sup> Paying for such items through a non-recurring source like the forfeiture fund has the potential to corrupt forfeiture practices, as alluded to in the “policing for profit” literature.<sup>29</sup> Decisions to engage in law enforcement-related activities such as stops and asset seizures should be determined exclusively by factors legally relevant to the situation, free from the conflict-of-interest brought that having to seize property just to keep the patrol cars fueled inherently causes.

### **Civil Forfeiture Reform in Texas: Promising Solutions**

Texas has the opportunity to implement pointed, simple procedural reforms that will both stop abusive forfeiture practices, allow the government to still claim property used in or garnered from criminal activity, and redeploy the property or apply its value for legitimate activities.

#### ***Reverting the Burden of Proof to the State***

Through small procedural amendments to Chapter 59 of the Code of Criminal Procedure, Texas can establish that its law enforcement agencies must prove their case before any transfer of ownership occurs, rather than the property owner having to establish their innocence. This would not fully address the level of the burden of proof, but it would wholly restore the

automatic presumption of innocence. This would also obviate the need for an “innocent owner” provision.

Even while shifting the burden of proof in civil asset forfeiture to the state, the state could still be allowed to seize property in certain circumstances before a person has been convicted. Under this approach, the state could seize property for a limited period, such as 72 hours if there is an allegation of serious felony. Moreover, the state could only keep the property after 72 hours if it has obtained a court ruling that finds that there is a high likelihood of both conviction and the property being ultimately unrecoverable if it is returned pending the resolution of the case. While this approach would still allow for civil asset forfeiture in some cases, even in these cases the burden would be on the government to go to court to keep the property beyond 72 hours, which is far different from the current regime where the burden is on the individual to initiate action seeking return of their property.

#### ***Elevating the Standard of Evidence Sufficiency to Trigger Forfeiture***

Texas could also elevate the standard to satisfy the burden of proof in forfeiture proceedings. Following the lead of other states with stronger forfeiture protections, legislation could be introduced that requires the state to prove its case beyond a reasonable doubt, akin to criminal proceedings. At least, clear and convincing evidence should be required, not merely the current preponderance of the evidence standard, which is merely a 51 percent or “slightly more likely than not” bar to clear.

#### ***Abolish the Practice Entirely***

Perhaps the simplest way to ensure that civil asset forfeiture abuse is curtailed would be to outlaw the practice entirely. This would require law enforcement agencies to prove their case to a criminal court before keeping and liquidating seized property.<sup>30</sup> Once a guilty plea or guilty finding is entered, the agency can dispose of the property as they wish. This would ensure sanctity of the practice and also preserve the accused’s due process guarantees.

North Carolina has no effective civil forfeiture provision provided by law. State and local agencies must prove their case to criminal standards if they are to keep seized property. While this is certainly laudable, it comes as no surprise that North Carolina agencies draw copious amounts from the federal equitable sharing fund. There is some consolation to be found

in the increased reporting needed by the federal government to remand the funds to the states. North Carolina's example illustrates the need for additional reform, such as implementing the two reforms discussed immediately below, to curtail equitable sharing abuse if Texas were to abolish the practice of civil asset forfeiture.

### ***Require the Attorney General to Approve Equitable Sharing Payments***

While Texas can do little to curb the abuse of the equitable sharing pass-through, it can demand a higher standard of its law enforcement agencies. The Legislature can mandate that if local agencies are to participate in an equitable sharing agreement with the federal authorities, any funds seized from alleged activities not in violation of state law must be approved by the Attorney General. This will allow statewide elected oversight and suppress abusive practices by local authorities.

Further, the Legislature can mandate that no agency may engage in equitable sharing agreements until the procedural safeguards mentioned above are implemented.

### ***Establish a Common Pool for Holding Forfeiture Funds***

Texas can provide further disincentives to the practice by establishing a general fund through which the proceeds of seized assets are deposited. From this fund, agencies would receive a share based on a formula that accounts for department size, population policed, proximity to the national border, and other relevant inputs. While this would not wholly preclude forfeiture abuse, this would lay to rest the allegations of directly "policing for profit."

### ***The Limits of Reporting Mandates and Restrictions on Expenditures***

A precise accounting for what the proceeds of seizures have purchased is very difficult to obtain, even in jurisdictions that do report the activities of a forfeiture fund. Given the fungible nature of cash and the value of liquidated assets, nearly any expenditure made by an agency after having seized property or receiving equitable sharing payments could be the result of not having to spend the equivalent value elsewhere in their budget.

For example, suppose an agency seizes \$50,000 worth of assets and, as an unrelated coincidence, wishes to refurbish their break room with nice furniture, electronics, and beverage ma-

chines. The agency could apply \$50,000 of the forfeiture fund to salaries, equipment repair, or the like, while covering the renovations with general expenditures.

For this reason, it is unlikely that restricting what forfeiture funds may be spent on will have any discernable effect, as general funds may be spent in lieu and later substituted. Even if legislation were passed saying forfeiture proceeds could only be spent on bullet-proof protective gear and squad cars, the money originally appropriated for these items could be spent on the frivolities mentioned above.

Transparency provisions or mandatory reporting requirements of forfeiture takings, revenues, and expenditures, such as those enacted in Texas in 2011, can contribute to an overall increase in perceived trust and legitimacy, but only insofar as it accurately reflects the use of the practice.<sup>31</sup> Even under the assumption of 100 percent compliance and accuracy, sunlight may provide little incentive to discontinue a practice that nets such benefits.

### **Conclusion**

Texas and federal law fail to provide sufficient protections given the grave impact forfeiture typically has on affected individuals and businesses. Few legitimate legal scholars find fault with depriving criminals of the fruits of their illicit activities, but even fewer support establishing a framework wherein the innocent must underwrite a costly affirmative defense of their ownership interests. Such a system is anathema to the founding principles of this nation and, more plainly, the State of Texas.

While Texas' per-capita equitable sharing receipts are not significantly different than the national average, this does not mitigate the perversity of the practice. Just as our mothers all told us as children, "Just because everyone else is doing something doesn't mean that it's OK for you to do it, too."

Commonsense reforms in this area are easily attainable through simple procedural adjustments. By shifting the burden of proof to the state, law enforcement agencies will be required to successfully argue their claim to the property (i.e., that the property was party to or fruit of criminal activity) before the forfeiture is considered valid. By elevating the sufficiency standard to "clear and convincing evidence" or even "beyond a reasonable doubt," state officials will have a higher



benchmark to clear in order to keep an individual's property. Texas can lead the way in implementing these state-level reforms.

Texas cannot do much unilaterally to stem the cooptation of state and local law enforcement through equitable sharing abuse. However, this is an opportunity for Texas to take a stand on the matter. Even if the federal government keeps abusing its power and diminishing the rule of law, Texas can refuse to be part of the practice. It can forcefully say, "I stand up for my residents' liberty"—a point the federal government has not been able to claim for some time.

Ensuring the proceeds of forfeitures are returned to the general fund and then appropriated for those legitimate law enforcement and prosecution expenses would also yield greater transparency and honesty in the budget process. Over the long term, it could also benefit the agencies involved by ensuring that, in a year when asset forfeitures fall short, those funds

can be supplemented with general revenue so they are not left unable to perform their vital duties to the public.

The current practice of civil asset forfeiture, even when used prudently, erodes the Fifth Amendment's guarantee of due process and prohibition against unlawful takings, because of the limited and after-the-fact recourse available to affected individuals and businesses. The concentrated financial benefits to the government are clear, but can one truly measure the diffused cost of the erosion of liberty, rule of law, and legitimacy of government? ★

## Endnotes

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- <sup>3</sup> Tuchman & Wojtecki, 2009.
- <sup>4</sup> U.S. Census Bureau American Community Survey, 2011; Bureau of Justice Statistics Census of State and Local Law Enforcement Agencies (CSLLEA), 2008.
- <sup>5</sup> Marian Williams, Jefferson Holcomb, Tomislav Kovandzic, & Scott Bullock, "Policing for Profit: The Abuse of Civil Asset Forfeiture", Report from the Institute for Justice, 2010.
- <sup>6</sup> Donald Boudreaux & A.C. Pritchard, "Civil Forfeiture and the War on Drugs: Lessons from Economics and History", *San Diego Law Review*, 33 (1996) 94.
- <sup>7</sup> *Ibid.*
- <sup>8</sup> Williams, et. al., 2010.
- <sup>9</sup> Bob Ewing, "Taken: Federal Lawsuit in Michigan Challenges Forfeiture Abuse."
- <sup>10</sup> Bob Ewing, "IRS Backs Down: Michigan Forfeiture Case Voluntarily Dismissed."
- <sup>11</sup> Williams et al., 2010.
- <sup>12</sup> John Worrall, "Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement," *Journal of Criminal Justice*, 2001.
- <sup>13</sup> Karen Blum & Kathryn Urbanya, "Section 1983 Litigation," Federal Judicial Center, 1998.
- <sup>14</sup> *Bennis v. Michigan*, 516 U.S. 442, 1996.
- <sup>15</sup> Civil Asset Forfeiture Reform Act of 2000 (HR 1658), Pub. L. No. 106-185, 106th Cong., 2000.
- <sup>16</sup> Karl Dicky, "California Property Owner Wins Forfeiture Case from Marijuana Use on Property," *The Examiner*.
- <sup>17</sup> Jefferson Holcomb, Tomislav Kovandzic, & Marian Williams, "Civil Asset Forfeiture, Equitable Sharing, and Policing for Profit in the United States," *Journal of Criminal Justice*, 2011.
- <sup>18</sup> Bureau of Justice Statistics Census of State and Local Law Enforcement Agencies (CSLLEA), 2004.
- <sup>19</sup> Substance Abuse and Mental Health Services Administration (SAMHSA), "National Survey on Drug Use and Health, 2007"; Substance Abuse and Mental Health Services Administration (SAMHSA), "National Survey on Drug Use and Health, 2003."
- <sup>20</sup> Bureau of Justice Statistics, 2008.
- <sup>21</sup> U.S. Department of Justice, Asset Forfeiture Program "Reports to Congress," years 2000-2008.
- <sup>22</sup> Scott Bullock & Dick Carpenter II, "Forfeiting Justice: How Texas Police & Prosecutors Cash In on Seized Property" Report from the Institute for Justice, 2010.
- <sup>23</sup> Williams et al., 2010 at 92.
- <sup>24</sup> Bureau of Justice Statistics, 2008.
- <sup>25</sup> U.S. Department of Justice, 2000-2012.
- <sup>26</sup> Texas Code of Criminal Procedure, "Chapter 59: Forfeiture of Contraband."
- <sup>27</sup> Texas Department of Public Safety, "Federal & State Seized Funds Summary of Revenues and Expenditures, 2008-4/2013." Personal correspondence.
- <sup>28</sup> *Ibid.*
- <sup>29</sup> Williams et al., 2010; Holcomb, Kovandzic, & Williams, 2011; Worrall, 2001.
- <sup>30</sup> Williams et al., 2010.
- <sup>31</sup> Texas Senate Bill 316, 2011. Texas Code of Criminal Procedure, "Chapter 59: Forfeiture of Contraband."



## About the Author



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Cohen graduated with a B.S. in Criminal Justice from Bowling Green State University and an M.S. in Criminal Justice from the University of Cincinnati, where he is currently completing his Ph.D. dissertation on the long-term costs and outcomes associated with correctional programming. His academic work can be found in *Policing: An International Journal of Police Strategies & Management* and the forthcoming *Encyclopedia of Theoretical Criminology* and *The Oxford Handbook on Police and Policing*, and has scholarly articles currently under review. He has presented several papers to the American Society of Criminology, the Academy of Criminal Justice Sciences, and the American Evaluation Association on the implementation and outcomes of various criminal justice policy issues.

Prior to joining the Foundation, Cohen was a research associate with University of Cincinnati's Institute of Crime Science. He also taught classes in statistics, research methods, criminal procedure, and corrections.

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