



LOCAL POLICING, LOCAL OPTIONS

CIVIL ASSET FORFEITURE REFORM

Creating more-responsive, effective
community law enforcement

BY PATRICK TUOHEY



MISSION

***BCP uncovers ideas that work,
promotes realistic solutions and
forges partnerships that help people
in America's largest cities live free
and happy lives.***

CITIES AND COUNTIES HAVE OPTIONS FOR POLICING REFORM

Better Cities Project is proud to release three new publications focusing on municipal police reform. The reports, focusing on qualified immunity, civil asset forfeiture and federal task forces, show local leaders what they can do to increase accountability and trust in the institutions dedicated to public safety. These are not a panacea; the challenges to public safety are significant and often well beyond law enforcement policy. But to those interested in taking small measures to build public confidence and encourage honest debate, these reforms are a good start.

In this report, which focuses on civil asset forfeiture reform, we look at the dynamic of low standards and misaligned incentives that, together, mean local authorities regularly seize items such as cash or vehicles, without having to meet the higher bar of criminal law. Because the case is civil and not criminal, defendants are not eligible for public defenders nor protected against self-incrimination. And the cost to hire an attorney is often higher than the value of the seized property. As a result, property may be forfeited civilly even when the owner is not criminally convicted or even charged.

Research across the United States has found that civil asset forfeiture is more often practiced against poorer communities. This is no way to instill public confidence in a vital city service. Solutions — that local communities can enact on their own — exist that balance the needs of law enforcement with greater protection for innocent victims of asset seizure.

These recommendations, as well as those in our reports on qualified immunity and participation in federal task forces, won't solve all the challenges of addressing crime and providing public safety. But for communities paralyzed by rancorous debates over policing, they offer the opportunity to work together on what can be done to help without waiting on state and federal legislatures.

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FORFEITURE REFORM FREES UP POLICING RESOURCES

The most important part of civil asset forfeiture is the first word: civil. Although the practice is linked to the criminal justice system, such forfeitures are in fact handled through administrative procedure or the civil courts and pursued by municipal or federal administrators. Law enforcement can be incentivized to make such seizures if the value of the property benefits police budgets — but in those cases law enforcement is merely reacting to policies set elsewhere. As a result, men and women in uniform are bearing the burden of bad policy set by others.

In the battle to keep illicit drugs out of the country, or to make their distribution less profitable, property seizures may go a long way. They are certainly impressive indicators of police success.

But the majority of seizures come, not from criminal overlords, but from ordinary Americans often not convicted of — or even accused of — committing a crime. And because such seizures often benefit the municipality in which they are collected, there is an incentive to seize property from innocent Americans under the guise of fighting crime. Even if never acted upon, this incentive runs counter how we think of public safety.

But sometimes it is acted upon. In 2014, the City Attorney of Las Cruces, New Mexico, was videotaped telling people how police officers waited outside a bar hoping that the owner of a 2008 Mercedes would walk out drunk because they “could hardly wait” to get their hands on his vehicle so they could auction it off.¹

There is evidence that civil asset forfeiture is being used to prop up local budgets rather than fight crime. Research² suggests a 1% increase in local unemployment — a metric used to indicate local financial straits — results in a 9% increase in seizures.

Police argue that seizing and forfeiting such property, even without a trial, help keep crime down by stopping criminals and positively impacting police bud-

HIGHLIGHTS

- Simply carrying a large amount of cash is neither a crime nor evidence that a crime has been committed.
- While defenders of civil asset forfeiture point to its use on drug kingpins beyond the reach of US law, the average forfeiture is only \$1,200.
- BCP recommends cities and counties install minimum thresholds for seizure: \$1,000 in cash or \$5,000 for vehicles, similar to what has been enacted in Minnesota.
- Reforming civil asset forfeiture is popular with voters across the ideological spectrum.
- This allows police to continue to use asset forfeiture against large criminal enterprises while protecting run-of-the-mill offenders and the entirely innocent.
- These reforms won't affect law enforcement's ability to seize property supporting criminal activity. But they free up resources for more urgent policing matters and protect economically vulnerable members of the community.

“OUR COUNTRY’S CURRENT CIVIL FORFEITURE SYSTEM UNDERMINES CONSTITUTIONAL POLICING BY TAKING PROPERTY FROM PEOPLE BASED ON MERE SUSPICIONS, NOT CONVICTIONS, AND VIOLATES DUE PROCESS AND PROPERTY RIGHTS ... THE PRACTICE IS DEVASTATING FOR ALL AMERICANS, BUT ESPECIALLY FOR COMMUNITIES OF COLOR AND POOR PEOPLE THAT ARE VICTIMS OF UNCONSTITUTIONAL AND OVER-POLICING.”

KANYA BENNETT, ACLU SENIOR LEGISLATIVE COUNSEL, MARCH 27, 2019 REGARDING THE INTRODUCTION OF A CIVIL ASSET FORFEITURE REFORM BILL IN THE US HOUSE OF REPRESENTATIVES

gets. But research indicates this is not true — arrest and offense rates in a state that ended the practice remained the same, suggesting civil forfeiture was not meaningfully deterring crime before it was ended.³

Several states have taken up the issue of asset forfeiture reform, and there have been efforts to do the same in Congress, but cities don’t need to wait on others to act in order to affect reform in their communities. Civil asset forfeiture reform is popular among voters across the ideological spectrum once the issue is explained to them.⁴

HOW DOES CIVIL ASSET FORFEITURE WORK?

Law enforcement is permitted, if having probable cause, to seize cash, personal property and sometimes real property police believe may have been employed in the commission of a crime or that represent profits from a crime.

Once an item, such as cash or a vehicle, is in the possession of municipal authorities, they may seek to have the assets title transferred to the city through administrative procedures or civil litigation — as opposed to criminal litigation. This two-track system is the critical distinction, as the accused are granted far more rights in the criminal justice system as they are in the civil courts.

For example, because the asset forfeiture is sought civilly, the person it is sought against has no right to a public defender. Further, because the process is civil and not criminal, the defendant has no protection against self-incrimination, meaning that the municipal authorities can depose them.

Lastly, a federal program called equitable sharing allows local law enforcement to work around any state laws limiting forfeiture. According to an Institute for Justice report: “By collaborating with a federal agency, they can move to forfeit property under federal law and take up to 80% of what the property is worth. Granting law enforcement a direct financial stake in forfeiture encourages profiteering and not the pursuit of justice.”⁵

As a result, a person arrested by officers may go through the criminal courts while their property goes through a civil process. Or, as is too often the case, their property is forfeited civilly even when the owner is never convicted or even charged with a crime.





Even if a person wanted to go through the process of recovering their seized items, the median currency forfeiture is \$1,276⁶; hiring an attorney even for a simple forfeiture case is \$3,000. Not only is there an incentive for municipalities to seize property, there is a disincentive for people to fight back.

HOW DID THIS EVER BECOME POLICY?

The Southern Poverty Law Center gives a history of civil asset forfeiture in a recent report:

On August 15, 1822, the brig Palmyra, an armed privateer commissioned by the King of Spain, was captured on the high seas by the USS Grampus. Accused of violating the 1819 Piracy Act, the Palmyra was sent to South Carolina to await judgment.

Though the crew was “guilty of plunder,” no law existed under which its members could be punished, so no one was convicted of any crime. The Spanish government, claiming its flag had been “insulted and attacked” and its property stolen, demanded that the Palmyra be returned to its owner.

The U.S. Supreme Court determined that the ship was properly forfeited, ruling that it was permissible for the state to take property that had facilitated criminal activity, despite the fact that no person

was convicted of a crime.

Civil asset forfeiture is still lauded by law enforcement as an important tool to fight drug cartels and kingpins who lie outside of the legal reach of the US government by seizing property they use to commit their crimes or the cash they collect from it. However, due to the way the law is applied, it has instead been used to keep the property of ordinary Americans who often haven’t the time or resources to stand up for themselves.

THE VICTIMS

In 2020 and 2021, 407 people who had their assets seized by the city of Philadelphia between 2012 and 2018 were interviewed for a study.⁷ Only one in four was either found guilty or pleaded guilty, yet over two-thirds (69%) never regained their seized property. The median value of those items seized was \$600, and it was most often cash. The report, “Frustrating, Corrupt, Unfair: Civil Forfeiture in the Words of Its Victims,” points out that the process of reclaiming seized assets is arduous and appears to have greater impact on less-educated, lower-income and working-class individuals. Often, the cost of hiring an attorney to help navigate the system is greater than the value of the assets seized.

“... CIVIL ASSET FORFEITURE WAS SOLD TO THE PUBLIC AS A TOOL FOR TAKING THE ILL-GOTTEN GAINS OF DRUG KINGPINS. IN PRACTICE, HOWEVER, IT HAS BECOME A REVENUE STREAM FOR LAW ENFORCEMENT – BUT ONE WHOSE BURDEN FALLS MOST HEAVILY ON THE MOST ECONOMICALLY VULNERABLE.”

SOUTHERN POVERTY LAW CENTER, “FORFEITING YOUR RIGHTS. HOW ALABAMA’S PROFIT-DRIVEN CIVIL ASSET FORFEITURE SCHEME UNDERCUTS DUE PROCESS AND PROPERTY RIGHTS,” 2018.

Minorities

- A report on civil asset forfeiture in Alabama by the Southern Poverty Law Center found, “In 64% of cases where criminal charges were filed, the defendant was African American, even though African Americans comprise only about 27% of Alabama’s population.”
- A 2019 news investigation of the practice in South Carolina found that, “Seven out of 10 people who have property taken are Black, and 65% of all money police seize is from Black males.”⁸
- The Institute for Justice study of Philadelphia forfeiture victims found 67% of those having assets seized were Black, while Blacks only constitute 43% of the city population.

The Poor

- An examination of civil forfeiture victims in Philadelphia found that they were more likely to earn under \$50,000, be unemployed or have earned less than a college degree than the general population.
- A study of civil asset forfeiture in Chicago between 2012 and 2017 revealed, “that the seizures are clumped in the South and West side, overwhelmingly African-American neighborhoods.”⁹

Civil asset forfeiture impacts are reminiscent of what the Department of Justice found in its March 4, 2015 “Investigation of the Ferguson Police Department.” That report found that the Ferguson Municipal Court practices, “impose a particular hardship upon Ferguson’s most vulnerable residents, especially upon those living in or near poverty. Minor offenses can generate crippling debts, result in jail time because of an inability to pay, and result in the loss of a driver’s

license, employment, or housing.”¹⁰

While those subject to civil asset forfeiture are not necessarily subject to imprisonment, the impact of the asset loss is just as bad or greater than court-imposed fines.

STATE REFORMS

In recent years, New Mexico, Nebraska and Maine have abolished civil asset forfeiture and only permit taking property through criminal-law procedures. New Mexico’s reform, passed in 2015, goes further by depositing all revenue gained through the practice into state coffers, removing incentives to local law enforcement. The law also bars local law enforcement from transferring seized assets worth less than \$50,000 to the federal government, where proceeds are often shared with local police.

The Institute for Justice reported in an analysis of crime rates that, “Compared to Colorado and Texas, New Mexico’s overall crime rate did not rise following the implementation of strong forfeiture reform in 2015, nor did arrest rates drop. These findings are contrary to forfeiture proponents’ predictions.”¹¹

Alabama also instituted civil asset forfeiture reforms in 2021 that bar law enforcement from seizing cash under \$250 or cars valued at less than \$5,000. As in Philadelphia, the Southern Poverty Law Center found that, “in half of the 1,110 cases examined in Alabama, the amount of cash involved was \$1,372 or less.”¹² Again this demonstrates that the civil asset forfeiture laws are not being applied only to drug kingpins as the law was designed and supporters claim.

MODEL THRESHOLD ON SEIZURE & FORFEITURE ORDINANCE

If your city or county would like to implement reasonable reforms to civil asset forfeiture that protect citizen rights, free up law enforcement for more meaningful policing and serve to increase public support for police, the model ordinance below provides a framework.

100:1 Short title and application. This act may be cited as the Threshold on Seizure and Forfeiture Ordinance. It shall apply to the seizure and forfeiture of property used in and derived directly from one of the following crimes:

- (1) Controlled substances §
- (2) Fleeing the scene of a crime (optional) §
- (3) Driving under the influence (optional) §
- (4) Prostitution (optional) §
- (5) Drafter insert other crimes (optional) §

100:2 Property exempt from seizure and forfeiture.

- A. U.S. currency totaling \$1,000 or less is exempt from seizure and forfeiture.
- B. A motor vehicle of less than \$5,000 in market value is exempt from seizure and forfeiture.
- C. The city attorney shall advise the publications that law enforcement agencies may use to establish the value of a motor vehicle in this jurisdiction.

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100:3 Receipt.

- A. When property is seized in this jurisdiction, the law enforcement officer shall give an itemized receipt to the person possessing the property at the time of the seizure.
- B. If the person possessing the property is not present, the seizing officer shall leave a receipt in the

place where the property was found, if reasonably possible.

100:4 Waiver prohibition.

- A. A law enforcement officer employed by this jurisdiction, other than the city attorney or his designee, may not request, induce, or require a person to waive, for purpose of seizure or forfeiture, the person's interest in property.
- B. A document purporting to waive interest or rights in seized property is void and inadmissible in court.

100:5 Limitation on federal adoption.

- A. The 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 the federal Controlled Substances Act, Public Law 91-513-Oct. 27, 1970, or other federal law.
- B. Paragraph A only applies to a seizure by state and or local law enforcement agencies pursuant to their own authority under state law and without involvement of the federal government. 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 local law enforcement is prohibited from accepting payment of any kind or distribution of forfeiture proceeds from the federal government if the state or local law enforcement agencies violates paragraph A. All such proceeds should be directed to the state's general fund.



END NOTES

1. Sullivan, "Police Can Seize and Sell Assets Even When the Owner Broke No Law," NPR, 2014. <https://www.npr.org/sections/thetwo-way/2014/11/10/363102433/police-can-seize-and-sell-assets-even-when-the-owner-broke-no-law>
2. Kelly, "Fighting Crime or Raising Revenue? Testing Opposing Views of Forfeiture," Institute for Justice, 2019. <https://ij.org/wp-content/uploads/2019/06/Fighting-Crime-or-Raising-Revenue-7.20.2020-revision.pdf>
3. Knepper, "Policing for Profit, The Abuse of Civil Asset Forfeiture," Institute for Justice, 2020. <https://ij.org/report/policing-for-profit-3/>
4. YouGov poll, September 2020. <https://ij.org/wp-content/uploads/2020/11/Results-for-Institute-for-Justice-Civil-Forfeiture-245-9.30.2020-1-Civil-Forfeiture-2.pdf>
5. Institute for Justice, <https://ij.org/issues/private-property/civil-forfeiture/#:~:text=Civil%20Forfeiture%20%2D%20Institute%20for%20Justice&text=IJ%20defends%20the%20right%20of,seizures%2C%20searches%2C%20and%20fines>.
6. Knepper, "Policing for Profit, The Abuse of Civil Asset Forfeiture," Institute for Justice, 2020. <https://ij.org/report/policing-for-profit-3/>
7. McDonald, "Frustrating, Corrupt, Unfair: Civil Forfeiture in the Words of Its Victims," Institute for Justice, 2021. https://ij.org/wp-content/uploads/2021/09/Frustrating-Corrupt-Unfair_Civil-Forfeiture-in-the-Words-of-Its-Victims-2.pdf
8. Cary, "65% of cash seized by SC police comes from black men. Experts blame racism," Greenville News, 2019. <https://www.greenvilleonline.com/story/news/taken/2019/01/27/south-carolina-racism-blamed-civil-forfeiture-black-men-taken-exclusive-investigation/2459039002/>
9. Ciaramella, "Poor Neighborhoods Hit Hardest By Asset Forfeiture in Chicago, Data Shows," Reason, 2017. <https://reason.com/2017/06/13/poor-neighborhoods-hit-hardest-by-asset/>
10. United States Department of Justice Civil Rights Division, "Investigation of the Ferguson Police Department," 2015. https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report_1.pdf
11. Knepper, "Policing for Profit, The Abuse of Civil Asset Forfeiture," Institute for Justice, 2020. <https://ij.org/report/policing-for-profit-3/>
12. Southern Poverty Law Center, "Forfeiting Your Rights," 2018. https://www.splcenter.org/sites/default/files/com_civil_asset_forfeiture_report_finalnocrops.pdf

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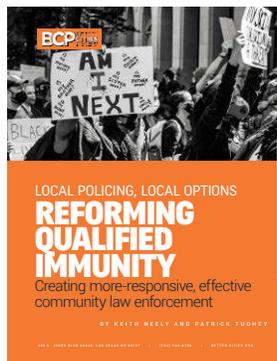
Patrick Tuohey is co-founder and policy director of the Better Cities Project. He works with taxpayers, media, and policymakers to foster understanding of the consequences – sometimes unintended – of local-government policies. He previously served as the senior fellow of municipal policy at the Show-Me Institute.

Patrick’s essays have been published widely in print and online, including the Kansas City Urban League’s 2015 and 2019 “State of Black Kansas City.” His work has spurred parents and activists to oppose economic development incentive projects where they are not needed and was a contributing factor in the KCPT documentary, “Our Divided City” about crime, urban blight, and public policy in Kansas City.

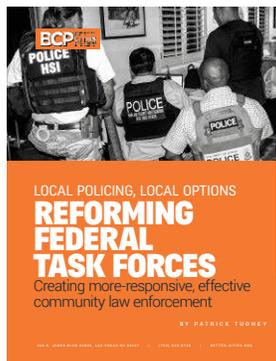


ADDITIONAL READING

This report is one of four created by Better Cities Project as part of its Municipal Policing Project. Each report details a specific, effective reform that creates a more responsive, responsible local law enforcement function without waiting on action from Washington or the statehouse.



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bcp.fyi/taskforces



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NEXT STEPS
**WE
CAN
HELP.**

Whether you have an office at city hall, the county commission, a desk in a newsroom or a seat at the kitchen table as an informed citizen, BCP can help you explore these and other policy suggestions in depth.

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Our updates keep tens of thousands of local elected officials and engaged citizens informed about the latest ideas in local-government policy.

GET IN TOUCH

BCP can help identify specific research and recommendations relevant to your community's challenges, direct you to the right experts for answers and offer presentations related to these and other topics.

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