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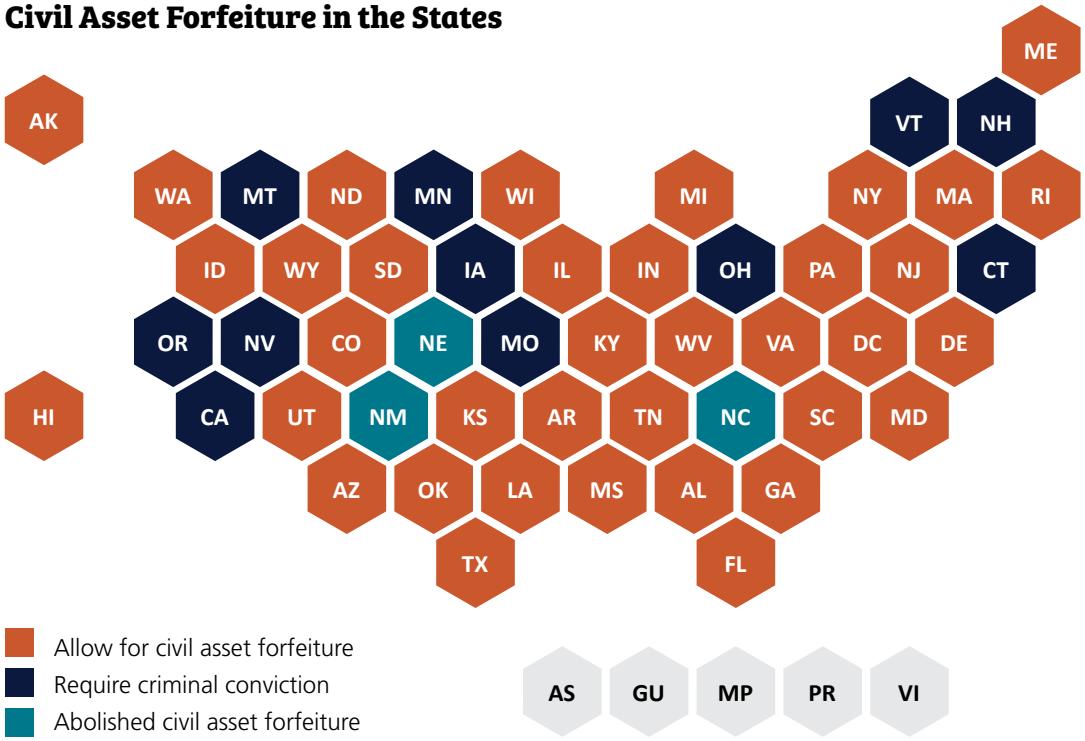
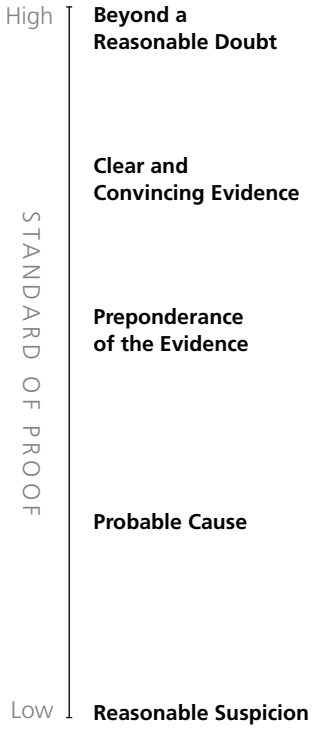
Civil Asset Forfeiture in the States



Source: Institute for Justice, 2018

Standards of Proof



Evolving Civil Asset Forfeiture Laws

BY ANNE TEIGEN AND LUCIA BRAGG

All states and the federal government allow law enforcement to seize and forfeit cash, property and other materials they believe are associated with illegal activity. These forfeitures can happen in two ways: criminal or civil. Criminal asset forfeiture proceedings occur against a person after being convicted of an underlying criminal offense. In civil asset forfeiture, once property has been seized, prosecutors can file civil actions in order to forfeit, or keep, the property of someone suspected of being involved in an illegal activity. The action is against the property—not the person—and can be seized even if the person is not charged or convicted of a crime.

Forfeiture laws allow the government to keep the seized cash and property, destroy the property, or sell it and keep the proceeds to fund a number of activities. Depending on the law, the proceeds can be used for law enforcement expenses, such as investigative activities, equipment, restitution payments to crime victims, drug education programs, prosecutorial costs, or to supplement school budgets.

Law enforcement and proponents of civil asset forfeiture argue it is a key tool that helps defund organized crime, prevent new crimes from being committed and weaken criminal cartels. Critics of civil forfeiture argue that it denies property owners basic due process rights, and that giving law enforcement a financial stake in civil forfeiture can distort their priorities and encourage the pursuit of property over the administration of justice.

Did You Know?

- Justice Clarence Thomas issued an opinion criticizing civil forfeiture laws in 2017.
- According to the Institute for Justice, approximately 15 states now publish forfeiture information online.
- North Carolina, New Mexico and Nebraska have abolished civil forfeiture entirely.

Federal Action

Civil asset forfeiture has its roots in maritime and customs law, but modern civil asset forfeiture practices were introduced by the Comprehensive Crime Control Act of 1984. This law established the Assets Forfeiture Fund at the Department of Justice (DOJ) for asset proceeds and the Equitable Sharing Program. Equitable Sharing allows state and local law enforcement agencies to transfer seized assets associated with federal crimes to federal agencies, which then carry out forfeiture proceedings. Once the assets are successfully forfeited to the federal government, the proceeds are deposited in an appropriate forfeiture fund and state and local agencies receive a percentage of the total, depending on the specific type and circumstances of a particular case.

In 2000, Congress comprehensively reorganized federal civil asset forfeiture law. The Civil Asset Forfeiture Reform Act expanded forfeiture to "any specified unlawful activity," and introduced procedural tools and time limits. In 2015, U.S. Attorney General Eric Holder implemented a new policy prohibiting the federal agency forfeiture, or "adoptions" of, assets seized by state and local law enforcement agencies, with a limited public safety exception. In 2017, U.S. Attorney General Jeff Sessions reversed the policy, allowing the federal government to take all assets associated with federal crimes that have been seized lawfully by state and local governments, and reviving the Equitable Sharing Program.

State Action

Though developments on the federal level have both tightened and relaxed controls on civil asset forfeiture over time, states have passed their own civil asset forfeiture laws, creating considerable variation between states and even between types of crimes. In 2017, over 100 bills related to civil asset forfeiture were introduced in all 50 states. Many looked to adjust the standard of proof, or the degree of evidence necessary for law enforcement to establish proof that the property seized is related to a crime in order to win the forfeiture case. In many states, the standard of proof is a preponderance of the evidence. In the last two years, Arizona, Iowa and Virginia enacted laws changing the government's burden of proof from a preponderance to clear and convincing evidence, making it more difficult to seize property.

Eleven states—California, Connecticut, Iowa, Minnesota, Missouri, Montana, Nevada, New Hampshire, Ohio, Oregon and Vermont—require a criminal conviction (proof beyond a reasonable doubt) to engage in some or all forfeiture proceedings. California, Iowa and Ohio exclude property valued under a certain amount from the criminal conviction requirement. North Carolina, New Mexico and Nebraska have abolished civil forfeiture entirely.

Even when law enforcement fails to make the case for seized property, owners can often find retrieving their property onerous, expensive and time-consuming. As a result, "innocent owners"—those who had no involvement with the alleged crime—often don't get their property back. States are working to clarify and protect the rights of property owners by improving this process. For example, Michigan made a major change to its law in 2017. Previously, to challenge a property seizure, the owners had to post a bond worth 10 percent of the property's value, albeit no less than $250 and no more than $5,000. Failure to post bond within 20 days of the property's seizure would result in an automatic forfeiture. Under the new law, property owners are no longer required to post a cash bond before they can challenge a civil forfeiture case in court. Similarly, Utah's 2017 law provides that if claimants are acquitted of the crime that gave rise to the forfeiture, prosecutors must return their seized property. Oklahoma amended its law in 2015 to allow judges to award attorney fees to people whose assets were found to be unjustly seized by law enforcement. Arizona has a similar provision in its comprehensive 2017 law.

Opponents of civil asset forfeiture laws cite a heightened risk for abuse because in many states, law enforcement have incentive to seize property, as they receive some or all of the proceeds from its sale. To address this concern, some state legislatures are directing where proceeds should go, with a focus on how much, if any, should be given to law enforcement. Seven states and Washington, D.C., direct 100 percent of forfeited funds to government use other than law enforcement. For example, Indiana's and Missouri's constitution allocate all forfeiture proceeds to public education. In the remainder of states, a certain percentage of the forfeiture proceeds—ranging from 50 percent to 100 percent—go back to local law enforcement. In 2015, Georgia passed a law that restricts the amount of money an agency or task force can receive to a third of the agency's annual budget. It allows the district attorney's office to collect 10 percent of the forfeited property proceeds and the remaining amount must be used for indigent defense, drug treatment, rehabilitation, prevention, substance abuse education, and victim-witness assistance programs.

Additional Resources

NCSL blog, SCOTUS Ruling Requires Relook at State Asset Forfeiture Laws

U.S. Department of Justice, Policy and Guidelines on Federal Adoptions of Assets Seized by State or Local Law Enforcement

The Heritage Foundation, An Overview of Recent State-Level Forfeiture Reforms

Institute for Justice, Civil Forfeiture Reforms on the State Level

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