



House Criminal Justice Reform Committee October 12th, 2022

Interim Charge 2B: Study the criminal procedure and due process from initial detention through appeal, including the civil asset forfeiture process.

Introduction

Thank you to the Chair, Vice Chair, and committee for convening today and taking time to discuss these charges as we prepare for our upcoming legislative session. My name is Akanksha Balekai, and I am a Criminal Justice Policy Analyst at Texas Appleseed. Our organization is dedicated to changing unjust laws and policies that prevent Texans from realizing their full potential.

Today, we are providing testimony on charge 2B. While charge 2B covers a number of issues related to criminal procedure and due process through detention and appeal, we seek to address the civil asset forfeiture process. Specifically, we would like to discuss the value of and need for increased data reporting and transparency in incidents where property is seized by law enforcement.

Civil Asset Forfeiture in Texas: A Process in Need of Transparency

Civil asset forfeiture is the legal process by which law enforcement agencies, particularly local police departments, are able to seize either currency or property from owners under a suspicion that it was used for or obtained through criminal activity. Once property has been seized by law enforcement, a court then determines if it is subject to forfeiture (i.e., permanent confiscation). In order to seize property, **law enforcement officers need only have “probable cause” that there may be a crime associated with it.** This places innocent owners at risk of experiencing unnecessary and obstructive seizures, often during a routine traffic stop. Law enforcement is incentivized to engage in asset forfeiture because the seizing agency (e.g., police department) usually gets to keep a majority of the funds and/or proceeds from the property forfeited. **At times, these asset forfeiture funds can make up a significant portion of some police departments’ budgets** instead of these funds being brought in through more traditional, appropriate means.¹

If property owners choose to contest the seizure, they often face an uphill battle. Forfeiture is a civil proceeding, not a criminal one, which means the State is tasked with meeting a much lower standard of proof to permanently forfeit assets. **It becomes the owner’s responsibility to prove their own innocence if they wish to retain their property rights, and they have no right to counsel.** The cost of hiring an attorney can be more

than the value of the property that was seized from them, making the effort to fight the case counterintuitive. The property owner must also travel back to the court in the jurisdiction where the seizure occurred, presenting additional barriers if it was outside of their hometown or county. **As a result, nearly half of asset forfeiture cases end in default with funds or proceeds going to the seizing law enforcement agency, with this number varying by county².** The existing nature of civil asset forfeiture laws in the state of Texas provides room for misuse when there is an opportunity for law enforcement to seize property. When this misuse occurs, it is further enabled through court proceedings that make what may be rightful reclamation of that property very difficult. In light of this, **there are a number of potential improvements that can be made to expose, limit, and prevent these issues.**

Texas Appleseed advocates for a version of civil asset forfeiture more akin to “criminal asset forfeiture”. That is, a version where the property is not the one being charged; the alleged wrongdoer is. This means the property owner must first be convicted of a crime and their property must then be tied by clear and convincing evidence to the criminal activity for forfeiture to occur. This puts the responsibility on the government to establish guilt rather than on the owner to establish innocence and **allows for law enforcement to mitigate real crime without harming innocent citizens.** But alongside this, a critical first step in better evaluating civil asset forfeiture practices in our state is to increase our knowledge of these practices.

In Texas, the reporting requirements on asset forfeiture are limited to what is seized, its monetary value, and how these profits are then spent. This means that there are substantial gaps in the records such as the location of the seizure, information on the trial and whether it resulted in conviction, and details such as race of the claimant which may present disparate trends in who is targeted. **In fact, the Institute of Justice states that Texas only reports 4 out of the recommended 20 reporting details that should be required³.** Despite these already minimal requirements, agencies often fail to report the information they are expected to. Their only consequence is a fine or the cost of an external audit by the comptroller; however, they are still able to access and utilize the forfeiture funds they seized and did not report, as allowed by statute. In the place of this limited and often unavailable information, we can expand upon current Texas reporting requirements, mandate annual reports, and increase penalties when those reports are not produced.

These improvements can take the shape of the following

1. **Expanding upon current Texas reporting requirements which only mandate reporting of monetary value and expenditures.** Other states have included relevant details in their asset forfeiture reporting requirements, such as location of the seizure, race and sex of the individual from which the property was seized, criminal charges associated with the seizure, outcome of the associated criminal case (e.g., dismissal, conviction, etc.) and the eventual fate of the property (returned, sold etc.). These are only examples of what information could be collected. This creates greater transparency on Texas forfeitures and the outcomes of these cases, providing valuable information as we seek to improve the process.

2. **Requiring departments to submit an annual report detailing the number of forfeitures of currency, the number of forfeitures of different types of property, the value of the forfeitures, and the reasoning/offense behind the forfeiture.** This provides a broader understanding of how civil asset forfeiture practices play out across departments, and where abuse of it may be frequent.
 3. **Imposing greater penalties on departments who do not comply with reporting requirements.** Other states who have the highest standards of reporting requirements apply the same fines as Texas in addition to withholding forfeiture funds until the fine has been paid and the audit completed. This increases the likelihood that information is reported in a comprehensive, accurate, and timely manner.
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Conclusion

The process of civil asset forfeiture in the state of Texas is in need of great improvement. Property can be seized for reasons that are unclear beyond the potential benefit to the law enforcement agency seizing it, and those who try and reclaim their property often face innumerable obstacles. If they cannot surmount these obstacles, or realize the effort involved surpasses the value of what they've lost, their property can end up supplementing the budgets of the law enforcement agencies that took it from them – even if it never should have been taken at all.

Correcting the wrongs that occur in the existing civil asset forfeiture process can begin with holding law enforcement agencies accountable for their actions. To do this, we need comprehensive and strongly enforced reporting requirements on each seizure they conduct, the eventual expenditures of the profits, and, most importantly, the outcomes of all associated criminal cases. These requirements often fall short of creating actual transparency within law enforcement agencies for two reasons: firstly, their limited scope in details reported, and secondly, a failure to enforce the reporting requirements at all. By accounting for these issues through the recommendations above and increasing access to information on the way the civil asset forfeiture process is being conducted, we can work towards meaningful reform that emphasizes fair practices and shifts whose responsibility it is to meet the burden of proof.

Thank you for your time and consideration. If you have any further questions or concerns, please do not hesitate to reach out.

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References

¹ Williams, J. (2020, December 5). New Report Finds Civil Forfeiture Rakes in Billions Each Year, Does Not Fight Crime. *Institute for Justice*. <https://ij.org/press-release/new-report-finds-civil-forfeiture-rakes-in-billions-each-year-does-not-fight-crime-2/>

² Texas Appleseed (2020). Internal data analysis of Civil Asset Forfeiture Case Outcomes; McCullough, J., Coronado, A., & Essig, C. (June 7, 2019). Texas police can seize money and property with little transparency: So we got the data ourselves. *The Texas Tribune*. Retrieved from <https://apps.texastribune.org/features/2019/texas-civil-asset-forfeiture-counties-harris-webb-reeves-smith/>; Alabama Appleseed & the Southern Poverty Law Center (2018). *Forfeiting your rights: How Alabama's profit-driven civil asset forfeiture scheme undercuts due process and property rights*. Retrieved from <https://www.alabamaappleseed.org/report-forfeiting-your-rights/#:~:text=Civil%20asset%20forfeiture%20is%2C%20at,the%20government%20can%20keep%20it> .

³ Erickson, A. (2017). Forfeiture Transparency & Accountability. *Institute for Justice*. Retrieved October 12th, 2022, from <https://ij.org/report/forfeiture-transparency-accountability/?state=US-TX>