What is civil asset forfeiture?

Civil asset forfeiture is a tool that allows law enforcement officials to seize property that it asserts has been involved in certain criminal activity. In fact, the owner of the property doesn’t even need to be guilty of a crime: Civil asset forfeiture proceedings charge the property itself with involvement in a crime. This means that police can seize an individual’s car, home, money, or valuables without ever having to charge him or her with a crime.¹

Who keeps the assets once forfeited?

Law enforcement can retain up to 90% of forfeited funds.⁴ In fiscal year 2012 alone, regional and local law enforcement entities in Texas reported closing the year with over $143 million in their forfeiture accounts.⁵

What are the avenues for recovery of assets after seizure?

An individual whose property is seized typically must appear in court to prove that the seized assets are not contraband. Court appearances can be difficult for property owners who do not actually live in the jurisdiction where the forfeiture action is proceeding and owners are not entitled to a lawyer in these proceedings.

What are some top concerns with civil asset forfeiture in Texas?

- Misuse of seized funds and other property⁶;
- Abuse of police authority, including, but not limited to, the use of the threat of incarceration if compliance with a forfeiture is refused⁷; and
- Targeting of minorities and racial profiling.⁸
“Unsurprisingly, civil forfeiture, once focused on the illicit goodies of rich drug dealers, now disproportionately ensnares those least capable of protecting themselves, poor Texans who usually capitulate without a fight because mounting a defense is too costly. . . . A generation ago in America, asset forfeiture was limited to wresting ill-gotten gains from violent criminals. Today, it has a distinctive Alice in Wonderland flavor, victimizing innocent citizens who’ve done nothing wrong.”

— Justice Don Willett, Texas Supreme Court

Sensible Solutions

1. Eliminate the practice of civil asset forfeiture.
2. Elevate the standard sufficient to trigger the ability to execute a forfeiture.
3. Restore the assumption of “innocent until proven guilty” by shifting the burden of proof to the State, requiring the State prove its case before transfer of ownership can occur.
4. Establish a common pool for holding forfeiture funds, to ensure funds do not go directly to law enforcement or prosecutors’ offices without proper due process.
5. Institute comprehensive, mandatory reporting requirements, provided by the benefitting office (including, by way of example only, where funds are acquired, what form funds are obtained in, and what occurs in hearings).

Sowing the Seeds of Justice

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“...[F]orfeiture is big; it’s a problem; and there’s something that you can do about it.”

— Matt Miller, Institute for Justice

1 The Heritage Foundation, available at http://www.heritage.org/research/reports/2014/03/civil-asset-forfeiture-7-things-you-should-know.
2 Texas Crim. Code, Title 1, Ch. 59, Art. 59.05(b).
4 Id.