



Civil Asset Forfeiture in Texas

Criminal Justice Project

Issue Brief (February 2023)

INTRODUCTION¹

Law enforcement agencies and local police use civil asset forfeiture to seize money or property from owners under suspicion that it was either used for -- or obtained through -- criminal activity. After property is seized, a court determines whether the property is subject to forfeiture (*i.e.*, permanent confiscation).

Civil asset forfeiture has been shown to have a number of problematic issues. Law enforcement agencies have an incentive to seize assets because the seizing agency (*e.g.*, local police department) may be entitled to retain most or all of the forfeited money or property. Because civil asset forfeiture is not a criminal process, property owners are not entitled to a publicly funded attorney. As a result, contesting forfeiture in court can be costly, outweighing the value of the seized money or property.

The problems for property owners are difficult to address, however, because of a general absence of data and transparency about the seizure and forfeiture process. Although the purpose of civil asset forfeiture is to reduce criminal activity, efforts to maintain equitability in the process are impeded by the lack of available data. The public is entitled to transparency. It is essential that there are procedures in place to enforce the proper collection of information when assets are seized, that this information is then made accessible in a timely manner, and that it is then used to create asset forfeiture practices that help prevent or prosecute criminal activity.

KEY FACTS

- In 2020, law enforcement agencies and prosecutors throughout Texas seized more than \$40 million in cash and other property through asset forfeiture. None of these seizures recorded by the Texas Attorney General distinguished whether the seizures resulted in a conviction, or whether the seizures followed a conviction.²
- In 2016, data across six counties (Dallas, Denton, Fort Bend, Hidalgo, Montgomery, and Nueces) showed nearly half of the civil asset forfeiture cases ended in default.³
- When law enforcement seizes assets, Texas does not require that the agencies report the alleged crime(s) that led to the seizure.⁴
- In Texas, up to 70% of forfeiture proceeds is retained by law enforcement in cases where property is forfeited by default, and up to 100% is retained by law enforcement where forfeiture is contested.⁵

BACKGROUND

Civil asset forfeiture laws are meant to be a tool to prevent engagement in future crime. Notably, forfeiture laws are highlighted as a way to seize property that may be used by cartels, money launderers, or others for drug trafficking⁶. After the passage of the 21st Amendment to the U.S. Constitution – which repealed the 18th Amendment and ended laws that banned the sale and transport of liquor – practices that were predecessors to modern civil asset forfeiture became obsolete.⁷ Since then, two federal acts, the Comprehensive Drug Abuse Prevention and Control Act of 1970 ("CDAPCA"), and the Comprehensive Crime Control Act of 1984 ("CCCA"), provided the foundation for the practice currently known as civil asset forfeiture. The CCCA encouraged state and local governments to adopt civil asset forfeiture laws by allowing the government entities to retain forfeited

assets. The CCCA also introduced equitable sharing, a practice where the federal government could retain these assets and transfer most of the money from forfeitures into state accounts.

As a result of these policies, civil asset forfeiture has become more common, evolving from a practice initially meant to prevent crime to one that supplements police and law enforcement budgets. In 2000, Congress passed amendments to the Federal criminal code by passing the Civil Asset Forfeiture Reform Act, which clarified when assets could be seized and expanded legal avenues for those challenging the seizure of their property. However, the Act also enabled law enforcement to retain 100% of forfeiture proceedings.⁸

The use of asset forfeiture varies greatly from state to state, each with different reporting requirements and laws determining when and if property can be initially seized. Outside of these state laws, law enforcement agencies can participate in equitable sharing,⁹ which allows state and local law enforcement agencies to partner with the federal government to seize and forfeit property under federal law. In practice, equitable sharing allows state governments to retain up to 80% of the property seized, regardless of state law.¹⁰ In Texas, these seizures could occur at any time, including a routine traffic stop, and law enforcement is not required to report the suspected crime committed.

Asset forfeiture cases are also handled by state court systems in varying ways. In 16 states, a criminal conviction is required for property to be permanently retained in civil court. In other states, the state bears the burden of displaying clear and convincing evidence that the property must be retained after it is initially seized. Other states, like Texas, require a simple preponderance of evidence – resulting in the burden falling to the person whose property was seized to display evidence that their property was not involved in criminal activity and thus should be returned.¹¹

CIVIL ASSET FORFEITURE PROCESSES IN TEXAS

In Texas, law enforcement officers need only have “probable cause” that there may be a crime associated with property or assets for initial seizure; no proof of crime is required. The funds associated with these seized assets may become an assumed part of some police departments’ budgets.¹² This process creates a problematic reliance on inconsistent methods of department funding.

Property owners who choose to contest the seizure often face an uphill battle. In Texas, asset forfeiture is a civil, not criminal, proceeding, which means the State is tasked with meeting a much lower standard of proof to retain said assets.¹³ The property is charged rather than the owner (e.g., *The State of Texas v Dodge RAM*). The owner then becomes responsible to prove that the property is not associated with a crime if they wish to maintain the rights to that property. Because this process occurs in civil court, there is no right to defense counsel. The cost of hiring an attorney can be more costly than the value of the seized property, rendering efforts to challenge the property seizure moot. Additionally, if the seizure occurred far from home – which happens often during routine traffic stops - then the property owner must also travel back to the court in the jurisdiction where the seizure occurred, presenting additional barriers related to arranging travel (e.g., public transportation, child or elder care, day(s) off from work/school). As a result, nearly half of asset forfeiture cases end in default, and funds or proceeds are retained by the seizing law enforcement agency.¹⁴

In 2014, funds related to property seized from Texans by law enforcement provided between 14% and 18% of police budgets.¹⁵ Between 2013 and 2018, Texas law enforcement spent approximately \$266 million in asset forfeiture funds.¹⁶ About half of this money went to equipment and capital expenditures, while a quarter was expended on personnel.¹⁷ These funds include property repurposed by police departments, such as cars.¹⁸ Despite laws barring law enforcement from utilizing civil asset forfeiture profits on certain expenditures,¹⁹ an exception in Texas’ Criminal Code of Procedure (Article 59.06(d-1)(7)) allows a municipality’s governing body or

the commissioners court to approve a salary increase for law enforcement officers through the use of those funds.²⁰ This exception paired with the financial contribution to police budgets highlights a clear benefit of relying on continuing practices as they stand.²¹

Texas' civil asset forfeiture laws provide an opportunity for law enforcement to continue to mistreat and misuse the practice. The broad language of the forfeiture laws, the imbalance on the burden of proof, and the limitations on representation provide a landscape ripe for legislative reform.

A PROCESS IN NEED OF REFORM

Texas' civil asset forfeiture process provides law enforcement personnel the opportunity to claim a crime has occurred for the benefit of police department funding, rather than the benefit of public safety. The property itself is charged with a crime, which allows for a seizure to be upheld based on the minimal proof of preponderance of evidence, a lower level of proof than if the owner of the property is charged. The State must show only that the property was more likely than not used (or intended to be used) in the commission of a crime.²² To recoup property, the owner is obliged to prove they were not using the seized property for criminal activity. These existing legal challenges are compounded by the additional burdens that may be placed upon a property owner seeking to reclaim property.

Legal arguments strongly suggest that civil asset forfeiture as practiced in Texas is unconstitutional.²³ Civil asset forfeiture capitalizes on a loophole in the way a case is classified to deny due process to the individual accused of a crime by charging the property instead of a person. With probable cause necessary for an initial seizure of property and few viable legal avenues for it to be recovered, current civil asset forfeiture practices and laws infringe on Texans' due process rights guaranteed by the 14th Amendment.²⁴

Furthermore, when budgets are built around civil asset forfeiture profits, law enforcement agencies have the incentive to seize property, especially when the seized property may become their unit's next patrol car, or lead to a salary bump.²⁵ Under the Texas statute, law enforcement is not required to report or specify the crime suspected when seizing property but rather need only articulate probable cause to seize the property, effectuating a "guilty until proven innocent standard," further disenfranchising Texans who do not have the money or resources to fight these cases.²⁶

Civil asset forfeiture is a product of the "War on Drugs," which historically targeted communities of color.²⁷ Civil asset forfeiture thus disproportionately affects people of color and low-income people, with research showing that there is a higher use of civil asset forfeiture in places with greater income disparity. Civil asset forfeiture can occur at places like traffic stops, where communities of color are often targeted, putting them at higher risk of having their assets seized.²⁸ In Texas, where reporting requirements are sparse, the risk is only increased (see Appendix).

RECOMMENDATIONS FOR REFORM

Texas' asset forfeiture system is in need of reform, and the first step to determining what changes should be made is collecting more information on how the process is currently operating. Under other states' laws, such as in the neighboring state of Arkansas²⁹, along with Iowa³⁰ and Missouri³¹, asset seizure is only permitted if there is a crime on record and police have probable cause to believe that the property is affiliated with that crime. For forfeiture to occur, the property owner must first be convicted of a crime and then the property must be tied by clear and convincing evidence to the criminal activity. This puts the burden on the prosecuting entity to first establish guilt of criminal activity, rather than on the owner to establish innocence, and allow law enforcement to mitigate criminal activity.

In Texas, the reporting requirements on asset forfeiture are limited to what is seized, its monetary value, and how these profits are then spent.³² Substantial gaps in the records exist, such as the location of the seizure, information on the trial [of the owner?], and whether the charged offense resulted in conviction. Other states include 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 (e.g., returned, sold etc.).³³ Texas collects only four of twenty potential reporting details outlined by the Institute of Justice, a non-profit, public interest law firm that conducts extensive research on asset forfeiture practices and outcomes.³⁴ In comparison, Tennessee collects eight and Florida collects 10 (see Appendix for more detail).³⁵ Additional details such as the race of the claimant may reveal disparate trends in who is targeted. Despite these already minimal requirements, agencies often fail to report even the smallest number of details required by Texas law. The only consequence of failure to report is a fine or the cost of an external audit by the comptroller; however, law enforcement bodies are still able to access and utilize the seized, unreported forfeiture funds as allowed by statute.

For these reporting requirements to be effective, the state should require law enforcement agencies to submit an annual report. The goal of these reports would be to gain a broader understanding of how civil asset forfeiture practices play out across departments, and where abuse of it may be frequent. Collecting this data is a critical step in reforming existing asset forfeiture practices - this data should include but not be limited to, the number of forfeitures of money/currency, the number of forfeitures of different types of property, the value of the forfeitures, and the reasoning/offense behind the forfeiture. Penalty for non-compliance with these reporting requirements could take the form of a fine plus restriction of forfeiture funds for law enforcement agencies until the fine has been paid, an audit has been completed, and all reporting requirements have been submitted. This accountability increases the likelihood that information is reported in a comprehensive, accurate, and timely manner.

CONCLUSION

The process of civil asset forfeiture in the state of Texas requires reform. Property can be seized for reasons beyond the potential benefit to the law enforcement agency, and owners who try to 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 supplement the budgets of the law enforcement agencies that took it from them – even if it never should have been taken at all.

Addressing the shortcomings of the existing civil asset forfeiture process begins with ascertaining more information on *when* and *where* in the process those wrongs may occur. To do this, we need comprehensive and strongly enforced reporting requirements on each seizure conducted, the eventual expenditures of the profits, and, most importantly, the outcomes of all associated cases. However, these requirements could 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.

Appendix: Comparison of Reporting Requirements Across Four Southern States

State	Number of Reporting Requirements
Texas	4 (A, C, E, R)
Oklahoma	6 (A, C, E, K, P, R)
Tennessee	8 (A, B, C, F, K, N, O, P)
Florida	10 (A, B, C, E, F, G, K, N, O, P)

20 recommended reporting requirements by Institute for Justice

- A. Name of agency that seized the property.
- B. Date property was seized.
- C. Type of property seized (cash, car, electronics, etc.)
- D. Where property was seized
- E. Estimated value of seized property
- F. Alleged crime that led to seizure
- G. Crime for which suspect was charged if any.
- H. Criminal case number if any
- I. Outcome of suspect's case, if applicable
- J. If property was transferred to federal government for forfeiture, reason for transfer.
- K. Forfeiture case number if any
- L. Who filed a claim, if any, for return of property (suspect, joint owner, or third-party owner)
- M. If property was forfeited, whether it was forfeited under criminal, civil or administrative procedures.
- N. Date of forfeiture decision
- O. Whether there was a forfeiture settlement agreement
- P. What happened to the property (returned to owner; partially returned to owner; sold, destroyed, or retained by law enforcement)
- Q. Date property was returned to owner or sold, destroyed, or officially retained by law enforcement.
- R. Value of forfeited property
- S. Estimated forfeiture expenses (property storage, forfeiture investigation and litigation costs)
- T. Amount of attorneys' fees awarded to property owners if any



Contact Information:

Akanksha Balekai, Policy Analyst
 abalekai@texasappleseed.org
 737.900.9436 (cell)
 www.TexasAppleseed.org

REFERENCES & ENDNOTES

- ¹ Special thanks go out to Kirsty Leech, New Projects Policy Intern, for assisting in the authorship of this brief. Akanksha Balekai, Policy Analyst with the Criminal Justice Project, served as co-author.
- ² Texas Attorney General (2020), Texas Attorney General Forfeiture Report 2020, *Texas Attorney General*, <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/criminal-justice/AnnualReportForfeitedFunds2020.pdf>
- ³ Texas Appleseed (2020). Civil Asset Forfeiture Case Outcomes, *Texas Appleseed Internal Analysis*. Data and findings available upon request.
- ⁴ Erickson, A. (2017). Forfeiture Transparency & Accountability. *Institute for Justice*. <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf>
- ⁵ Institute for Justice (2020), Policing for Profit: The Abuse of Civil Asset Forfeiture. *Institute for Justice* <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf>
- ⁶ United States Drug Enforcement Administration. "DEA Asset Forfeiture". Retrieved from <https://www.dea.gov/operations/asset-forfeiture>
- ⁷ Budasoff, C. A. (2019). Modern Civil Forfeiture Is Unconstitutional. *Texas Review of Law and Politics*, 23(3), 467-488. <https://heinonline.org/HOL/Page?handle=hein.journals/trlp23&id=503&collection=journals&index=>
- ⁸ *Ibid.*
- ⁹ Institute for Justice (2020), Policing for Profit: The Abuse of Civil Asset Forfeiture. *Institute for Justice* <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf>
- ¹⁰ *Ibid.*
- ¹¹ <https://ij.org/legislative-advocacy/civil-forfeiture-legislative-highlights/>
- ¹² Worrall, J.(2000), Addicted to the drug war: The role of civil asset forfeiture as a budgetary necessity in contemporary law enforcement, *Journal of Criminal Justice*, Volume 29, Issue 3 Pages 171-187 <https://www.sciencedirect.com/science/article/pii/S0047235201000824>
- ¹³ Carpenter, D., McDonald, J., & Popovich, Z. (2022). The Complex Process of Civil Forfeiture. CrimRxiv. <https://doi.org/10.21428/cb6ab371.3f24fe38>
- ¹⁴ Texas Appleseed (2020). Civil Asset Forfeiture Case Outcomes, *Texas Appleseed Internal Analysis*. Data and findings available upon request.
- ¹⁵ Stuteville, R. L. (2014). Reverse robin hood: the tale of how Texas law enforcement has used civil asset forfeiture to take from property owners and pad the pockets of local government the righteous hunt for reform is on. *Texas Tech Law Review*, 46(4), 1169-1202. <https://heinonline.org/HOL/Page?handle=hein.journals/text46&div=47&id=&page=&collection=journals>
- ¹⁶ Institute for Justice (2020), Policing for Profit: The Abuse of Civil Asset Forfeiture. *Institute for Justice* <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf>
- ¹⁷ *Ibid.*
- ¹⁸ <https://www.houstonchronicle.com/news/houston-texas/crime/article/dps-dodge-hellcat-17475350.php>
- ¹⁹ Texas Criminal Code, Chapter 59, Article 59.06 § (d). Retrieved from <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.59.htm>
- ²⁰ Texas Criminal Code, Chapter 59, Article 59.06 (d-1) (7). Retrieved from <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.59.htm> ; Stuteville, R. L. (2014). Reverse robin hood: the tale of how Texas law enforcement has used civil asset forfeiture to take from property owners and pad the pockets of local government the righteous hunt for reform is on. *Texas Tech Law Review*, 46(4), 1169-1202. <https://heinonline.org/HOL/Page?handle=hein.journals/text46&div=47&id=&page=&collection=journals>
- ²¹ Worrall, J.(2000), Addicted to the drug war: The role of civil asset forfeiture as a budgetary necessity in contemporary law enforcement, *Journal of Criminal Justice*, Volume 29, Issue 3 Pages 171-187 <https://www.sciencedirect.com/science/article/pii/S0047235201000824>
- ²² Texas Appleseed, Civil Asset Forfeiture Toolkit, <http://endforfeitureabusetx.org/guide/defending-against-civil-asset-forfeiture-case-toolkit-property-owners/questions-you-may-have-7>
- ²³ Budasoff, C. A. (2019). Modern Civil Forfeiture Is Unconstitutional. *Texas Review of Law and Politics*, 23(3), 467-488. <https://heinonline.org/HOL/Page?handle=hein.journals/trlp23&id=503&collection=journals&index=>
- ²⁴ Ross, D.R. (2000), Civil Forfeiture: A Fiction that Offends Due Process, *Regent University Law Review* <https://www.heartland.org/template-assets/documents/publications/13regentulrev259.pdf>
- ²⁵ Worrall, J.(2000), Addicted to the drug war: The role of civil asset forfeiture as a budgetary necessity in contemporary law enforcement, *Journal of Criminal Justice*, Volume 29, Issue 3 Pages 171-187 <https://www.sciencedirect.com/science/article/pii/S0047235201000824>

²⁶ Stuteville, R. L. (2014). Reverse robin hood: the tale of how texas law enforcement has used civil asset forfeiture to take from property owners and pad the pockets of local government the righteous hunt for reform is on. *Texas Tech Law Review*, 46(4), 1169-1202.

<https://heinonline.org/HOL/Page?handle=hein.journals/text46&div=47&id=&page=&collection=journals>

²⁷ Southern Poverty Law Center (October 2017). *Civil asset forfeiture: Unfair, undemocratic, and un-American*. Retrieved from https://www.splcenter.org/sites/default/files/com_policybrief_civil_asset_forfeiture_web.pdf

²⁸Ibid.

²⁹ AR Code § 5-73-130.

³⁰ Iowa Code § 809A.6.

³¹ Revised MO § 513.607.

³² Erickson, A. (2017). Forfeiture Transparency & Accountability. *Institute for Justice*. Retrieved October 12th, 2022, from <https://ij.org/case/texas-forfeiture-ii/>

<https://ij.org/report/forfeiture-transparency-accountability/?state=US-TX>

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.