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Civil Asset Forfeiture: Where Does the Money Go?*

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Abstract:

In the past 25 years, the "war on drugs" has continued despite evidence that it has not been successful. One aspect of this war, civil asset forfeiture, has been used as a tool by federal, state, and local law enforcement to "take the profit out of the drug trade" and to increase the amount of revenues that law enforcement may use to carry out the "war on drugs." The purpose of this research note is to examine federal and state studies to ascertain how proceeds from forfeitures *are* used by the respective governments. It was determined that a vast majority of states (88 percent) as well as the federal government explicitly allow law enforcement agencies to benefit from the "war on drugs" by keeping the proceeds from civil asset forfeitures. Likewise, only a small number of states (fewer than 20 percent) mention treatment or education as beneficiaries of proceeds, even though it has been argued that treatment and education may be more successful in reducing drug-related crime.

The purpose of this research note is to outline how states and the federal government may utilize the proceeds from civil asset forfeiture. This is done by providing an examination of the relevant state and federal laws that authorize the use of forfeiture proceeds. This note builds on the work of Kessler (1999), who provided analyses of state and federal forfeiture statutes and examined a number of jurisdictions in depth, and offers a more critical assessment of the use of civil asset forfeiture in the "war on drugs."

In general terms, there are two types of forfeitures. The first type, criminal forfeiture (also called *in personam* forfeiture), is employed after a criminal conviction has been garnered. In effect, the forfeiture is deemed a "punishment" for criminal justice purposes. Criminal forfeitures must be accompanied by the standard due process protections found in criminal cases, such as the requirement of "beyond a reasonable doubt" as the burden of proof (Stahl, 1992). Criminal forfeitures comprise about 20 percent of all forfeitures (Blumenson & Nilsen, 1998).

The second type of forfeiture, civil forfeiture (also called *in rem* forfeiture), is more common. Civil forfeitures most often take place in the absence of criminal proceedings and with fewer due process protections than are found in criminal forfeitures. To engage in civil forfeiture, a law enforcement agency need only prove by a "preponderance of the evidence" that assets were used in criminal activity, and those assets may be seized and subsequently forfeited by a court in a civil proceeding

FORFEITURE CONCERNS

The amount of money expended on the "war on drugs" has increased substantially in the past decade. For example, during the last 10 years, the federal government has allocated more than \$100 billion to the war, and this does not include the amount of money spent by state and local governments, which contribute, at a minimum, an equal amount (McNeece, Bullington, Mayfield, & Springer, 1999). Despite all this, there has been ample evidence to suggest that the "war on drugs" is a failure (Chambliss, 1995; Goode, 1999; Miller & Selva, 1994; Nadelmann, 1988; Zimring & Hawkins, 1992). One aspect of the war on drugs, civil asset forfeiture, has drawn both support and criticism as a tool for increasing the amount of money that law enforcement agencies can use to combat illegal drug use and distribution. In fact, some agencies report that the amount of money received from forfeitures is equal to or exceeds operating budgets (Blumenson & Nilsen, 1998; Hawk, 1993). Even if the war on drugs is considered a failure, it has increased the revenues of most, if not all, law enforcement agencies through the use of forfeitures (Benson & Rasmussen, 1998; Benson, Rasmussen, & Soliar\$, 1995; Miller & Selva, 1994).

Because of the lower standard of proof (compared to a criminal case) and the absence of criminal prosecution, civil forfeitures are more desirable to law enforcement agencies (Jensen & Gerber, 1996; Stahl, 1992). Supporters claim that civil forfeiture takes the profit out of the drug business and can be used as a tool in reducing the supply of drugs and drug-related crime (Office of National Drug Control Policy, 2001). It also enhances the relationship between federal and state law enforcement agencies. One Drug Enforcement Administration (DEA) agent stated that forfeiture "is not about the money. It's about the collaborative effort" (Masters, 2001, p. T3).

Critics argue that the ease of administration entices law enforcement agencies to use forfeiture to increase their revenues. Worrall (2001) argues that monetary concerns many times outweigh service and crime-control concerns, especially if there are budgetary shortfalls. A sheriff in Loudon County, Maryland, supports this by saying that forfeitures "help [us] buy equipment that we probably wouldn't get from the budget" (Masters, 2001, p. T3). Miller and Selva (1994) report that, before forfeiture, the amount of drugs and the level of threat were the primary determinants of police action. Today, however, the amount of money that can be seized is a primary determinant. Blumenson and Nilsen (1998) argue that some departments focus on drug buyers rather than dealers, because buyers are more likely to have cash on them. As a result, the "reducing supply" argument posited by supporters of civil forfeiture is baseless; focusing on buyers may, if anything, stem demand, not supply (Blumenson & Nilsen, 1998).

To allay some of the concerns about civil asset forfeiture, Congress passed and President Clinton signed the Civil Asset Forfeiture Reform Act of 2001, Title 18 U.S. Code Section 981. This legislation provided more protection to individuals subject to federal civil forfeiture proceedings. One of the changes was an increased standard of proof needed in order for federal authorities to seize assets. Before the act, authorities needed only probable cause to engage in civil forfeitures; the standard is now a preponderance of evidence. In addition, the legislation created a uniform innocent owner defense and extended the amount of time in which a person may challenge a forfeiture. Despite all this, critics contend that this act does nothing to curb state and local forfeitures and that the standard of proof is still too low (Hadaway, 2000).

WHERE EXACTLY DOES THE MONEY GO?

Both federal and state governments have created laws to outline not only where forfeited money can go but also for what purposes the money may be used. Table 1 provides an illustration of these guidelines by listing the jurisdictions (states, the District of Columbia, and the federal government) that explicitly provide this information.

In the federal system, civil forfeitures are carried out under Section 881 of the Comprehensive Drug

Abuse Prevention and Control Act (Title 21, U.S. Code Section 881). Originally created in 1970, this act allowed the federal government to seize and forfeit a number of materials used in the illegal drug trade, and states have followed suit (Stahl, 1992). In 1984, the act was amended to allow proceeds from civil forfeitures to be deposited in the U.S. Treasury's General Fund. This amendment was changed in 1986, when the government allowed federal law enforcement agencies to keep proceeds related to the forfeiture. It also established "equitable sharing," which gives state and local agencies most of the proceeds of forfeitures (up to 80 percent) if they were involved in the action (Blumenson & Nilsen, 1998). "Equitable sharing" allows states to receive proceeds that go far beyond what they would normally receive if they conducted their own forfeitures, because the federal government engages in more profitable forfeitures (Blumenson & Nilsen, 1998). In fiscal 2001, the U.S. Justice Department's Asset Forfeiture Fund Program reported approximately \$400 million (Office of National Drug Control Policy, 2001). The Bureau of Justice Statistics (2000) reported that local law enforcement agencies received around \$650 million in 1997. Individual state totals are difficult to ascertain, because not all revenues from forfeitures are reported. For example, the state of Oregon reported receipts of about \$2 million from forfeitures in 2000, but not all forfeitures were reported ("Report Details Property Forfeiture Law," 2001).

A glance at Table I indicates that states, if they choose, could receive substantial revenues not only from federal forfeitures but also from their own. (See the Appendix for the statutes of each state.) If state law enforcement agencies alone engaged in forfeitures, most would receive some of the proceeds. Most jurisdictions have multiple outlets for proceeds of forfeitures (and are therefore represented in multiple columns in Table I). Some jurisdictions articulate specific guidelines for disposition of funds. For example, Illinois law states that 65 percent of proceeds are to go to law enforcement agencies and 12.5 percent are to go to the state attorney. In contrast, Florida does not specify how much is to go to various agencies. Most jurisdictions allow for property to be kept for official use (79 percent). An even higher number of jurisdictions (83 percent) allow for proceeds from forfeitures to be used to pay forfeiture expenses. Almost 9 out of 10 jurisdictions (88 percent) specify that funds from forfeitures are to be given to law enforcement agencies (including prosecuting agencies) or are to be used for law enforcement purposes. Blumenson and Nilsen (1998) argue that allocation of forfeited funds to law enforcement operations compromises crime prevention and due process. They also point out that revenues reach beyond police; courts receive funds, and judicial independence is called into question when a guilty finding rendered by a judge may directly increase the judge's budget.

Table 1

Disposition of Funds From Forfeitures by Type of Disposition

Keep for official use (property)	Pay forfeiture expenses	Use for liens/debts	Payment to fund for law enforcement purposes ^a	Payment directly to law enforcement agency ^b	Payment to non-law enforcement agency ^c	Payment to general fund ^d	Use for treatment/education
Alabama	Alabama	Colorado	Alabama	Alaska	California	Indiana	California
Arizona	Alaska	Connecticut	Arizona	California	Florida	Iowa	Connecticut
Arkansas	Arizona	Florida	Arkansas	Colorado	Indiana	Maine	District of Columbia
Delaware	California	Kansas	California	District of Columbia	Iowa	Maryland	Florida
District of Columbia	Colorado	Louisiana	Colorado	Hawaii	Missouri	Minnesota	Georgia
Florida	Connecticut	Maine	Connecticut	Illinois	New Hampshire	Mississippi	Kentucky
Idaho	Delaware	Minnesota	Delaware	Massachusetts	North Carolina	New Mexico	Massachusetts
Illinois	District of Columbia	Mississippi	Florida	Michigan	Rhode Island	Oklahoma	Montana
Indiana	Florida	Montana	Georgia	Minnesota	Tennessee	Tennessee	Nebraska
Iowa	Georgia	Nebraska ^e	Hawaii	Illinois	Vermont	United States	New York
Kansas	Hawaii	Nevada	Idaho	Indiana			Ohio
Kentucky	Idaho	New Hampshire	Illinois	Kansas			Pennsylvania
Louisiana	Illinois	New York	Indiana	Kentucky			Tennessee
Maryland	Kansas	Ohio	Kansas	Louisiana			Texas
Massachusetts	Louisiana		Kentucky	Montana			Washington
Michigan	Maine		Louisiana	Nebraska			
Minnesota	Maryland		Montana	Nevada			
Mississippi	Massachusetts		Nebraska	New Hampshire			
Montana	Michigan		Nevada	North Dakota			
Nebraska	Minnesota		New Hampshire	Ohio			
Nevada	Mississippi		North Dakota	Oregon			
New Hampshire	Missouri		Ohio	Pennsylvania			
New Mexico	Nebraska		Oregon	South Dakota			
New York	Nevada		Pennsylvania	Tennessee			
North Carolina	New Hampshire		South Dakota	Texas			
North Dakota	New York		Tennessee	Utah			
Ohio	North Carolina		Texas	Virginia			
Oklahoma	North Dakota		Utah	Washington			
Oregon	Ohio		Virginia	West Virginia			
			Washington	Wyoming			

Table 1 (continued)

Disposition of Funds From Forfeitures by Type of Disposition

Keep for official use (property)	Pay forfeiture expenses	Use for liens/debts	Payment to fund for law enforcement purposes ^a	Payment directly to law enforcement agency ^b	Payment to non-law enforcement agency ^c	Payment to general fund ^d	Use for treatment/education
Pennsylvania	Oregon		West Virginia				
Rhode Island	Pennsylvania						
South Carolina	Rhode Island						
South Dakota	South Carolina						
Texas	South Dakota						
United States	Tennessee						
Utah	Texas						
Virginia	United States						
Washington	Utah						
West Virginia	Vermont						
Wisconsin	Virginia						
Wyoming	West Virginia						
	Wisconsin						
	Wyoming						
39 states plus DC and US	41 states plus DC and US	15 states	31 states	23 states plus DC and US	9 states	10 states plus US	14 states plus DC

Note. See Appendix A for relevant statutes.

^aPayment made to state/municipal fund or special forfeiture fund for law enforcement purposes including training, education, enforcement, investigation, prosecution, etc.

^bTo be used for law enforcement purposes including training, education, enforcement, investigation, prosecution, etc.

^cIncludes schools, health departments, nonprofit organizations.

^dTo be used for "general fund" purposes, which could include law enforcement.

^eAlso used for fines and licenses.

Table 1 also gives an indication of forfeiture proceeds that may go toward other, non-law enforcement purposes. Nine jurisdictions (17percent) specify that at least some portion of forfeiture proceeds are to go to any of the following: schools, health departments, and nonprofit organizations. Another 29 percent (15 of 52 jurisdictions) specify that proceeds may be used for drug treatment or education. Of these, only 9 jurisdictions explicitly allow proceeds to be used for drug treatment. In total, this encompasses fewer than 20 percent of all states that specifically mention drug treatment. Some states allow proceeds to be deposited into the general fund, and this money could be used for treatment programs. Nevertheless, most states do not explicitly allow forfeited proceeds to be used for treatment. This is telling, because it has been argued that treatment appears to be more effective in reducing drug abuse and drug-related crime (Goode, 1999; McNeece et al., 1999). Thus, if one of the purposes of forfeiture is to reduce drug- related crime, it appears that most proceeds from forfeiture are not being used for that goal.

In addition, Law enforcement agencies may benefit from forfeiture even though state law forbids it (Boyd & Hill, 1999). In Missouri, for example, the constitution states that proceeds from state forfeitures are to be used for school purposes only. Until recently, Missouri law enforcement found away around this policy. Missouri law enforcement would investigate but would allow the federal DEA to carry out the seizure of property, and the federal courts would authorize the forfeiture. Because of "equitable sharing," Missouri law enforcement received up to 80 percent of the proceeds of these forfeitures; because Missouri officials did not seize the property and the state courts did not authorize forfeiture, the proceeds were not used "for school purposes only." According to Boyd and Hitt (1999), since 1993, Missouri has earned approximately \$41 million from forfeitures (state and federal), and only \$12 million has gone to schools. In May 2001, Missouri's governor signed into law a bill that closed this loophole. It took effect on August 28, 2001 ("Holden Signs Drug Forfeiture Bill,"2001).

In addition to the new legislation in Missouri, voters in Oregon and Utah, two states that have seen tremendous benefits from forfeitures, have passed initiatives that are hoped will curb forfeitures by law enforcement agencies (Mann, 2000). Other states, however, have called for amending laws to give agencies a larger share of proceeds. In Mississippi, the State Bureau of Narcotics wants to amend the state law that gives only 20 percent of forfeiture proceeds to local agencies. The Bureau feels that these local agencies should receive most of the proceeds because it would encourage state and local agencies to work together to generate more cases and larger proceeds. Local agencies need more funding; thus, larger proceeds would be helpful ("Mississippi Narcotics Agency," 2000).

CONCLUSION

This research note has examined how states and the federal government dispose of funds received from civil forfeitures. Although state and federal laws vary in terms of what proceeds can be returned to agencies, it is apparent that law enforcement agencies are receiving tremendous benefits from civil forfeiture. Worrall (2001) goes so far as to say that agencies are "addicted" to the revenues received from forfeitures because of the many uses of revenues in their work. The state and federal laws illustrated above allow law enforcement much leeway in the use of forfeited funds, and, coupled with the lowered due process

protections in civil forfeitures, it is no surprise that law enforcement agencies engage in this practice. On the surface, the "war on drugs" speaks of a reduction in or elimination of drug use and abuse. Drug use was on the decline, however, when the "war on drugs" began, and since that time the "war" has not contributed significantly to a decline in drug use. In fact, drug use has remained stable or has declined for most drugs (excluding heroin) (Bureau of Justice Statistics, 2000). Thus, there must be some reason besides inertia for the continuation of an unsuccessful war. One justification could lie in the success of civil forfeiture, allowing supplements to law enforcement revenues in the midst of inadequate budgets and contributing to "collaborative efforts" between federal and state agencies. Where would these budgets and "collaborative efforts" be if civil forfeiture were eliminated? This could explain why the "war on drugs" has continued for so many years despite ample evidence that it is a failure.

Appendix

Alabama	Code of Alabama § 20-2-93 (2001)
Alaska	Alaska Statutes § 17.30.122 (2001)
Arizona	Arizona Revised Statutes § 13-4315 (2001)
Arkansas	Arkansas Code Annotated § 5-64-5-505 (2001)
California	California Health and Safety Code § 11489 (2001)
Colorado	Colorado Revised Statutes 16-13-506 (2000)
Connecticut	Connecticut General Statutes § 54-36h, § 54-36i (2001)
Delaware	Delaware Code Annotated 16 § 4784 (2000)
District of Columbia	D.C. Code § 33-552 (2000)
Florida	Florida Statutes 932.7055 (2000)
Georgia	Official Code of Georgia Annotated § 16-13-49 (2000)
Hawaii	Hawaii Revised Statutes Annotated § 712A-16 (2000)
Idaho	Idaho Code § 37-2744, § 57-816 (2000)
Illinois	Illinois Compiled Statutes Annotated § 720-570/505 (2001)
Indiana	Indiana Statutes Annotated § 34-24-1-4 (2000)
Iowa	Iowa Code § 809A.17 (2001)
Kansas	Kansas Statutes Annotated § 60-4117 (2000)
Kentucky	Kentucky Revised Statutes Annotated § 218A.420, § 218A.435 (2001)
Louisiana	Louisiana Revised Statutes 40 § 2616 (2001)
Maine	Maine Revised Statutes 15 § 5822 (2000)
Maryland	Annotated Code of Maryland 27 § 297 (2001)
Massachusetts	Annotated Laws of Massachusetts 94c § 47 (2001)
Michigan	Michigan Statutes Annotated §14.15(7524) (2001)
Minnesota	Minnesota Statutes § 609.5315 (2000)
Mississippi	Mississippi Code Annotated § 41-29-181 (2001)
Missouri	Revised Statutes of Missouri § 513.623 (2000) Missouri Constitution Article 9, § 7 (2000)
Montana	Montana Code Annotated § 44-12-205, § 44-12-206 (2000)
Nebraska	Revised Statutes of Nebraska § 48-431, § 28-429 (2001)
Nevada	Nevada Revised Statutes Annotated § 179.1175, § 179.118, § 179.1187 (2001)
New Hampshire	New Hampshire Revised Statutes Annotated 318-B:17-b, 318-B:17-c (2000)
New Jersey	New Jersey Statutes § 2C:64-6 (2001)
New Mexico	New Mexico Statutes Annotated § 30-31-35 (2001)
New York	New York Civil Practice Law and Rules § 1349 (2001) New York State Finance Law § 97-w (2001)
North Carolina	General Statutes of North Carolina § 90-112 (2000)
North Dakota	North Dakota Century Code § 29-31.1-06, § 54-12-14 (2001)
Ohio	Ohio Revised Code Annotated § 2925.44 (2001)
Oklahoma	Oklahoma Statutes 63 § 2-503, § 2-506, § 2-508 (2000)
Oregon	Oregon Revised Statutes § 475A.120, § 475A.125 (1999)
Pennsylvania	Pennsylvania Consolidated Statutes 42 § 6801 (2001)
Rhode Island	General Laws of Rhode Island § 21-28-5.04 (2001)
South Carolina	Code of Laws of South Carolina Annotated §44-53-530 (2000)
South Dakota	South Dakota Codified Laws § 34-20B-89 (2001)
Tennessee	Tennessee Code Annotated § 40-33-211 (2001)
Texas	Texas Code of Criminal Procedure 59.06 (2000)
United States	Title 21 U.S. Code Section 881 (2001)
Utah	Utah Code Annotated § 58-37-13 (2001)
Vermont	Vermont Statutes Annotated 27 § 1227 (2001)
Virginia	Virginia Code Annotated § 19.2-386.14 (2001)
Washington	Annotated Revised Code of Washington § 69.50.505 (2001)
West Virginia	West Virginia Code Annotated § 60A-7-706, § 60A-7-707 (2001)
Wisconsin	Wisconsin Statutes § 961.55 (2000)
Wyoming	Wyoming Statutes Annotated § 35-7-1049 (2001)

Note. All statutes retrieved from Lexis-Nexis database (Lexis-Nexis Academic Universe) on the World Wide Web: <http://www.lexis-nexis.com/universe>

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