

# Civil Asset Forfeiture

Historically, civil forfeiture laws enabled law enforcement officials to seize the private property of individual citizens on the mere suspicion that this property has some connection to criminal activity. The property of citizens could be seized under these laws without the citizens even being charged with a crime and police departments could spend the proceeds.

This flips due process on its head and creates financial incentives for police to seize the property of innocent citizens. In 2015, Nevada adopted legislation to require a conviction in criminal court before civil property can be seized. Clear and convincing evidence must then tie the property in question to the crime. In addition, that legislation required the attorney general to begin collecting and publishing data on asset forfeitures.<sup>1</sup> In FY 2021, Nevada police seized \$5.8 million in property and ultimately kept \$3.2 million of that amount.<sup>2</sup>

## Key Points

**Civil forfeiture operates differently under state and federal laws.** States can set limiting standards for property seizures by state and local law enforcement. However, state and local law enforcement agencies often can circumvent those limitations by partnering with federal law enforcement.

Any joint task force or investigation with federal authorities allows for forfeiture to occur under federal law, which has few limitations and few protections for innocent property owners. Further, under the equitable sharing program operated by the U.S. Department of Justice, state and local law enforcement agencies can keep up to 80% of forfeiture proceeds.

State and local law enforcement can thus profit handsomely by seizing the property of innocent citizens under the federal “equitable sharing” program even when state laws provide more protection to innocent property owners. Empirical research confirms that state and local police agencies systematically participate more in the equitable sharing program when state laws include greater protection for property owners.<sup>3</sup> Between 2000 and 2019, Nevada law enforcement received \$73 million in seizures through the equitable sharing program.<sup>4</sup>

**Very few victims of asset forfeiture are found to be criminals.** From 1997 to 2013, just 13% of forfeitures enacted by the U.S. Department of Justice were associated with a criminal conviction; 87% were civil forfeitures with no conviction.<sup>5</sup>

**Civil forfeiture targets innocent parties and does not reduce crime.** In 2015, New Mexico abolished civil forfeiture and joined Nebraska and North Carolina as states that only permit forfeiture in a criminal proceeding. This prevents police from seizing property from innocent third-party owners who had no knowledge or relation to a crime. Data tracking has shown no measurable difference in New Mexico’s crime rates when compared to neighboring states.<sup>6</sup>

**Civil forfeiture doesn’t target kingpins.** The attorney general’s data collection obligations that began in 2016 have revealed the median seizure in Nevada to be worth \$908.<sup>7</sup> These seizures penalize individuals without significant assets. Forfeiture becomes more likely when the amount seized is lower than the likely legal fees to contest a seizure. In 2021, lawmakers considered a bill that would have prevented seizures of less than \$200 in cash,<sup>8</sup> but took no action following opposition from the Las Vegas Metropolitan Police Department.

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<sup>1</sup> Nevada Legislature, 78<sup>th</sup> Session, Senate Bill 138.

<sup>2</sup> Nevada Attorney General, NRS Chapter 179 Annual Asset Seizure and Forfeiture Reporting, FY 2021.

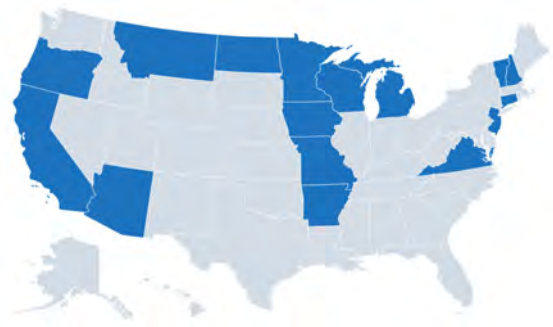
<sup>3</sup> Jefferson Holcomb et al., “Civil Asset Forfeiture, Equitable Sharing, and Policing for Profit in the United States,” *Journal of Criminal Justice*, Vol. 39 No. 3.

## Recommendations

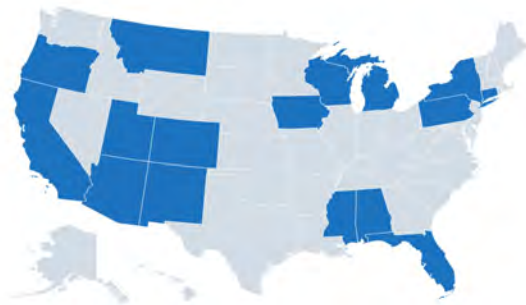
**Reduce profit incentive for police agencies.** Police agencies should not be able to expand their budgets or salaries through civil-asset forfeiture, a practice that incentivizes abuses. Legitimate seizures should be directed to the state or local government treasury.

**Follow New Mexico and abolish civil forfeiture.** Lawmakers should replicate the successful reform enacted in New Mexico as House Bill 560 (2015).<sup>9</sup>

## States that Require a Criminal Conviction Before Property Can Be Seized (2020)



## States that Place the Burden of Proof on Government (2020)



Source: Lisa Knepper et al., "Policing for Profit, 3<sup>rd</sup> Edition," Institute for Justice, December 2020.

<sup>4</sup> Lisa Knepper et al., "Policing for Profit, 3<sup>rd</sup> Edition" Institute for Justice, December 2020.

<sup>5</sup> Dick Carpenter et al., "Policing for Profit, 2<sup>nd</sup> Edition" Institute for Justice, November 2015.

<sup>6</sup> Op. cit., note 4.

<sup>7</sup> Ibid.

<sup>8</sup> Nevada Legislature, 81<sup>st</sup> Session, Assembly Bill 425.

<sup>9</sup> New Mexico Legislature, 2015 Session, House Bill 560.