

## **CIVIL ASSET FORFEITURE**

### **Talking Points**

Civil asset forfeiture is a legal tool that allows law enforcement officials to seize property that they assert has been involved in certain criminal activity. Civil forfeiture is ordinarily the product of a civil proceeding in which the property is treated as the offender, and the guilt or innocence of the property owner is considered irrelevant.

Virtually every kind of property, real or personal, tangible or intangible, may be subject to confiscation, with or without a warrant.

Use of civil asset forfeiture was originally intended as a way for law enforcement to seize assets of organized crime, or crimes committed "at the expense of government revenues" (i.e., money laundering, smuggling, tax evasion, etc.) and used the property and proceeds to fight against other alleged criminals.

Today, the practice is frequently used by local, state, and federal authorities as a way to generate revenue, and many of its targets are innocent members of the public.

### **Financial Incentive**

Current forfeiture laws create financial incentives for government to profit from civil asset forfeiture. The practice generates billions of dollars annually and the state is permitted to keep the assets it seizes.

Civil asset forfeiture happens in every state in the union.

### **Violation of Due Process**

Civil asset forfeiture violates due process. Property owners bear the cost of going to court and the burden of proving their property's "innocence." And in almost all instances, property owners are not entitled to counsel.

The majority of ~~federal~~ civil forfeitures end administratively, meaning that the property is automatically forfeited after a certain period of time

because the owner of the property did not challenge the seizure. The period provided to register intent to contest the seizure is very short.

In addition, law enforcement officials may pressure property owners to renounce ownership of their cars, homes, or money in order to avoid facing (often bogus) criminal charges. This quid pro quo raises serious fundamental questions about the fairness of the process.

And if a property owner holds out and goes to court, he or she will face a costly and lengthy battle.

### **What Can Be Done?**

State legislation containing these three major provisions will go a long way in protecting property rights and ending the incentive of local and state authorities to use civil asset forfeiture for profit:

1. Currently, when police seize property they can keep it even if you are innocent. Under the new law, police would need a conviction or a guilty plea in order to keep it, and property would be returned if charges are dropped or the suspect is acquitted.
2. Change the standard of proof. Under the new law, the burden would be on law enforcement to establish at least clear and convincing evidence that seized property is connected to a crime, after securing a conviction.
3. Change the incentive structure for police. Under the new law, if police do get a guilty verdict and your property is forfeited, it goes to the state's general fund rather than the police department's budget, at least adding a layer of oversight between police and the funds they seize.