

## **Asset Forfeiture**

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1.

### **Asset Forfeiture - Definition & Outcomes**

"Administrative forfeiture is the process by which property may be forfeited to the United States without judicial involvement. Federal seizing agencies perform administrative forfeitures. Seizures must be based on probable cause. The authority for a seizing agency to start an administrative forfeiture action is found in 19 U.S.C. § 1607.

"Administrative forfeiture can be used to seize and forfeit the following:

- any amount of currency;
- personal property valued at \$500,000 or less, including cars, guns, and boats;
- hauling conveyances of unlimited value.

"Real property cannot be forfeited administratively.

"Criminal forfeiture is an action brought as part of the criminal prosecution of a defendant that includes the forfeiture of property used or derived from the crime. If the defendant is convicted, the judge or the jury may find that the property is forfeitable. Forfeiture is limited to the property interests of the defendant and only to property involved in the particular counts on which the defendant is convicted. Only the defendant's interest can be forfeited in a criminal case because criminal forfeiture is part of the sentence in the criminal case.

"Civil forfeiture is a proceeding brought against the property rather than against the person who committed the offense. Civil forfeiture does not require either criminal charges against the owner of the property or a criminal conviction.

"To obtain a federal forfeiture, the Government must prove the forfeiture and the connection between the property and the crime by a preponderance of the evidence. Forfeiture may be applicable to property that is traceable as proceeds of the offense, that facilitated the offense, or that was involved in money laundering. All claims of interest or ownership in the property, such as property owned by third parties, are resolved in a single trial."

Source:

Asset Forfeiture and Money Laundering Section, "Guide to Equitable Sharing for State and Local Law Enforcement Agencies." (Washington DC: U.S. Justice Department, April 2009), Appendix A. pp. 31-32.

<http://www.justice.gov/criminal/afmls/pubs/pdf/guidetoeq09.pdf>

2.

"In a civil forfeiture action, the government need only prove by a preponderance of evidence that the property is subject to forfeiture. Criminal forfeiture, which is apparently much less common than civil forfeiture (Hyde, 1995), usually accompanies criminal charges and is more difficult because of the proof-beyond-a-reasonable-doubt standard (Warchol, Payne, and Johnson, 1996:53-54). Civil forfeiture may thus be pursued more frequently because of the lower standard of proof. In fairness, however, criminal forfeiture may be preferred sometimes because restrictions exist on divulging the amount of assets forfeited (Clingermayer, Hecker, and Madsen, 2005)."

Source:

Worrall, John L. and Kovandzic, Tomislav V., "Is Policing For Profit? Answers from Asset Forfeiture," *Criminology and Public Policy* (Columbus, OH: American Society of Criminology, 2008), Vol. 7, No. 2, p. 223.

Abstract: <http://www.ncjrs.gov/App/publications/abstract.aspx?ID=245729>

3.

"We did not seek to determine whether forfeiture activities ultimately reduce crime or affect drug-related arrest patterns. However, we found some evidence that police agencies engage in forfeiture practices that maximize their potential for revenue generation. Specifically, we found that significantly fewer equitable-sharing payments are collected in generous forfeiture states, which is consistent with the policing-for-profit allegation put forth by forfeiture's critics (e.g., Blumenson and Nilsen, 1998)."

Source:

Worrall, John L. and Kovandzic, Tomislav V., "Is Policing For Profit? Answers from Asset Forfeiture," *Criminology and Public Policy* (Columbus, OH: American Society of Criminology, 2008), Vol. 7, No. 2, p. 237.

Abstract: <http://www.ncjrs.gov/App/publications/abstract.aspx?ID=245729>

4.

According to a 1998 article published in the *University of Chicago Law Review*, the ability of law enforcement agencies to financially benefit from forfeited assets, and the provision of large block grants from Congress to fight the drug trade "have distorted governmental policy making and law enforcement." The authors believe that "the law enforcement agenda that targets assets rather than crime, the 80 percent of seizures that are unaccompanied by any criminal prosecution, the plea bargains that favor drug kingpins and penalize the 'mules' without assets to trade, the reverse stings that target drug buyers rather than drug sellers, the overkill in agencies involved in even minor arrests, the massive shift in resources towards federal jurisdiction over local law enforcement - is largely the unplanned by-product of this economic incentive structure."

Source:

Blumenson, E. & Nilsen, E., "Policing for Profit: The Drug War's Hidden Economic Agenda," *University of Chicago Law Review*, 65: 35-114 (1998, Winter).

[http://lsr.nellco.org/cgi/viewcontent.cgi?article=1008&context=suffolk\\_f...](http://lsr.nellco.org/cgi/viewcontent.cgi?article=1008&context=suffolk_f...)

5.

"The United States Attorneys' work on judicial asset forfeitures resulted in an estimated recovery of \$390,450,467 in forfeited cash and property during Fiscal Year 2004. This represents an increase of 14 percent over Fiscal Year 2003. Approximately \$2,626,415, or less than 1 percent, of the forfeited property was retained for official law enforcement use. Approximately \$44,229,624 of asset forfeiture proceeds were applied to restitution in victim-related offenses"

Source:

U.S. Department of the Treasury. "2007 National Money Laundering Strategy" (Washington, DC: 2007), p. 101.

<http://www.treas.gov/press/releases/docs/nmls.pdf>

6.

"Forfeiture was especially controversial during the 1980s and 1990s (Hyde, 1995; Levy, 1996), but in 2000, the Civil Asset Forfeiture Reform Act (CAFRA) (Pub. L. No. 106-185) was passed. One major feature of the legislation was improved: due-process protections for property owners. And before CAFRA in 2000, the burden of proof fell on property owners. This process all changed with CAFRA. CAFRA did not, however, alter the burden of proof for civil forfeiture proceedings. It just shifted it from property owners to the government, and it did not change the law governing the disposition of forfeited assets (Worrall, 2004)."

Source:

Worrall, John L. and Kovandzic, Tomislav V., "Is Policing For Profit? Answers from Asset Forfeiture," *Criminology and Public Policy* (Columbus, OH: American Society of Criminology, 2008), Vol. 7, No. 2, p. 224.

<http://www.ncjrs.gov/App/publications/abstract.aspx?ID=245729>

7.

#### **Asset Forfeiture - Financial Information**

"In Fiscal Year (FY) 2008, monies were available under a permanent indefinite appropriation to finance the following:

"(1) The operational costs of the forfeiture program, including handling and disposal of seized and forfeited assets, and the execution of legal forfeiture proceedings to perfect the title of the United States in that property.

"(2) The payment of innocent third party claims.

"(3) The payment of equitable shares to participating foreign governments and state and local law enforcement agencies.

"(4) The costs of ADP equipment and ADP support for the Program.

"(5) Contract services in support of the Program.

"(6) Training and printing associated with the Program.

"(7) Other management expenses of the Program.

"(8) Awards for information leading to forfeiture.

"(9) Joint Federal, state, and local law enforcement operations.

"(10) Investigative expenses leading to seizure."

Source:

Office of the Inspector General, Audit Division, US Dept. of Justice, "Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statement Fiscal Year 2008" (Audit Report 09-19, March 2009), p. 5.

[http://www.justice.gov/jmd/afp/01programaudit/fy2008/fy2008\\_afs\\_report.p...](http://www.justice.gov/jmd/afp/01programaudit/fy2008/fy2008_afs_report.p...)

8.

"Total assets, which presents as of a specific time, the amounts of future economic benefits owned or managed by the AFF/SADF [Assets Forfeiture Fund/Seized Asset Deposit Fund] increased in FY 2006 to \$2,053.4 million, from \$1,370.4 million in FY 2005, an increase of 49.8 percent. If seized assets, which are not yet owned by the government, are backed out, the adjusted assets of the Fund increased to \$1,256.2 million in FY 2006 from \$659.2 million in FY 2005, an increase of 90.6 percent. This is attributable to an increase in both forfeited assets and seized assets in FY 2006 from FY 2005, indicating a strong current and future potential stream of assets flowing into the AFF."

Source:

Office of the Inspector General, Audit Division, US Dept. of Justice, "Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statement Fiscal Year 2006" (Audit Report 07-15, January 2007), p. 6.

[http://www.justice.gov/jmd/afp/01programaudit/fy2006/fy06\\_afs\\_report.pdf](http://www.justice.gov/jmd/afp/01programaudit/fy2006/fy06_afs_report.pdf)

9.

"The United States Attorneys Offices filed asset forfeiture counts in 3,785 criminal cases, which sought forfeiture as a criminal penalty during Fiscal Year 2004, representing an increase of 9 percent over the prior year. At the end of the fiscal year, there were 5,103 criminal asset forfeiture cases pending, an increase of 16 percent when compared to Fiscal Year 2003. Additionally, 2,235 civil forfeiture actions were filed by the United States Attorneys during the fiscal year, an increase of 4 percent when compared to the prior year. The United States Attorneys also obtained 1,433 civil asset forfeiture judgments in favor of the United States during the year, which represents a 14 percent increase over the prior year."

Source:

U.S. Department of the Treasury. "2007 National Money Laundering Strategy" (Washington, DC: 2007), p. 101.

<http://www.treas.gov/press/releases/docs/nmls.pdf>

10.

"Fifty-two percent of all sheriffs' offices received money, property, or goods from a drug asset forfeiture program during 2002 (table 32). These sheriffs' offices employed 76% of all sworn personnel. More than 8 in 10 of the sheriffs' offices serving populations of 500,000 or more had drug asset forfeiture receipts.

"During 2002 the overall median amount received from drug asset forfeiture programs by sheriffs' offices was \$10,000. By population category, the median amount received ranged from about \$1 million among sheriffs' offices serving a population of 1 million or more to \$5,000 among those serving fewer than 10,000 residents.

"Overall, sheriffs' offices received an estimated \$178 million in money, goods, and property from drug asset forfeitures during 2002. Including both sheriffs' offices with receipts and those without, this was the equivalent of \$992 per sworn officer employed. Sheriffs' offices with 1,000 or more officers received the most — nearly \$1,700 per officer (figure 11). Next highest were agencies with 250 to 999 officers which received about \$1,100 per officer and those with under 25 officers which received about \$1,000 per officer. Sheriffs' offices with 25 to 49 officers received the least — \$449 per officer."

Source:

Hickman, Matthew J. and Reaves, Brian A., "Sheriffs' Offices 2003" (Washington, DC: USDOJ, Bureau of Justice Statistics, May. 2006), NCJ 211361. p. 16.

<http://www.ojp.usdoj.gov/bjs/pub/pdf/so03.pdf>

11.

"The overall median amount received from drug asset forfeiture programs by local police departments during 2002 was \$7,000. By population category, the median amount received ranged from about \$1.2 million among departments serving a population of 1 million or more to \$2,000 among those serving fewer than 2,500 residents."

Source:

Hickman, Matthew J.. and Reaves, Brian A., "Local Police Departments 2003" (Washington, DC: USDOJ, Bureau of Justice Statistics, May. 2006), NCJ 210118, p. 16.

<http://www.ojp.gov/bjs/pub/pdf/lpd03.pdf>

12.

"Local police departments received an estimated \$298 million in money, goods, and property from drug asset forfeitures during 2002. Including both departments with receipts and those without, this was the equivalent of \$642 per sworn officer employed. Departments with 100 to 249 officers received the most — \$990 per officer (figure 11). Next highest were departments with 250 to 999 officers with \$928 per officer. Departments with fewer than 50 officers received the least — about \$400 per officer."

Source:

Hickman, Matthew J. and Reaves, Brian A., "Local Police Departments 2003" (Washington, DC: USDOJ, Bureau of Justice Statistics, May. 2006), NCJ 210118, P. 16.

<http://www.ojp.gov/bjs/pub/pdf/lpd03.pdf>

13.

"Thirty-six percent of all local police departments received money, property, or goods from a drug asset forfeiture program during 2002 (table 32). These departments employed 78% of all local police officers. At least 80% of the departments in each population category of 25,000 or more had drug asset forfeiture receipts."

Source:

Hickman, Matthew J.. and Reaves, Brian A., "Local Police Departments 2003" (Washington, DC: USDOJ, Bureau of Justice Statistics, May. 2006), NCJ 210118, p. 16.

<http://www.ojp.gov/bjs/pub/pdf/lpd03.pdf>

14.

"Total assets, which present as of a specific time the amounts of future economic benefits owned or managed by the AFF/SADF, increased in FY 2008 to \$3,120.7 million from \$3,056.5 million in FY 2007, an increase of 2.1 percent. If seized assets, which are not yet owned by the government, are backed out, the adjusted assets of the Fund increased to \$1,892.2 million in FY 2008 from \$1,790.6 million in FY 2007, an increase of 5.7 percent. This is attributable to an increase in forfeited assets in FY 2008 from FY 2007, indicating a strong current and future potential stream of assets flowing into the AFF. The AFF/SADF fund balances with the U.S. Treasury were lower in FY 2008 than FY 2007."

Source:

Office of the Inspector General, Audit Division, US Dept. of Justice, "Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statement Fiscal Year 2008" (Audit Report 09-19, March 2009), p. 6.

[http://www.justice.gov/jmd/afp/01programaudit/fy2008/fy2008\\_afs\\_report.p...](http://www.justice.gov/jmd/afp/01programaudit/fy2008/fy2008_afs_report.p...)