

Civil Asset Forfeiture

- “No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” Fifth Amendment, U.S. Constitution
- “Unlike a criminal charge, you do not have the right to court-appointed counsel when the government wants to take your property. . . . So the state usually wins their case by default judgment.” — Robert Guest, Law Enforcement Against Prohibition
- “The protections our Constitution usually affords are out the window,” — Louis Rulli, University of Pennsylvania

Texas Appleseed's mission is to promote social and economic justice for all Texans by leveraging the skills and resources of volunteer lawyers and other professionals to identify practical solutions to difficult systemic problems.

The Problem

What is civil asset forfeiture?

Civil asset forfeiture is a tool that allows law enforcement officials to seize property that it asserts has been involved in certain criminal activity. In fact, the owner of the property doesn't even need to be guilty of a crime: Civil asset forfeiture proceedings charge **the property itself** with involvement in a crime. This means that police can seize an individual's car, home, money, or valuables without ever having to charge him or her with a crime.¹

What is the standard of proof required for civil asset forfeiture?

The state only has the burden of proving **by a preponderance of the evidence** that property, real or personal, is subject to forfeiture.²

Does the state recognize the innocent owner defense?

Texas does recognize the innocent owner defense, which allows a property owner to claim that they are innocent of a crime and therefore their property should not be forfeited. However, **the burden is on the owner** to show that their property should not be forfeit.³

Who keeps the assets once forfeited?

Law enforcement can retain up to 90% of forfeited funds.⁴ In fiscal year 2012 alone, regional and local law enforcement entities in Texas reported closing the year with over **\$143 million** in their forfeiture accounts.⁵

What are the avenues for recovery of assets after seizure?

An individual whose property is seized typically must appear in court to prove that the seized assets are not contraband. Court appearances can be difficult for property owners who do not actually live in the jurisdiction where the forfeiture action is proceeding and owners are not entitled to a lawyer in these proceedings.

What are some top concerns with civil asset forfeiture in Texas?

- Misuse of seized funds and other property⁶;
- Abuse of police authority, including, but not limited to, the use of the threat of incarceration if compliance with a forfeiture is refused⁷; and
- Targeting of minorities and racial profiling.⁸

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“Unsurprisingly, civil forfeiture, once focused on the illicit goodies of rich drug dealers, now disproportionately ensnares those least capable of protecting themselves, poor Texans who usually capitulate without a fight because mounting a defense is too costly. . . . A generation ago in America, asset forfeiture was limited to wresting ill-gotten gains from violent criminals. Today, it has a distinctive *Alice in Wonderland* flavor, victimizing innocent citizens who’ve done nothing wrong.”

— *Justice Don Willett, Texas Supreme Court*

Sensible Solutions

1. Eliminate the practice of civil asset forfeiture.
2. Elevate the standard sufficient to trigger the ability to execute a forfeiture.
3. Restore the assumption of “innocent until proven guilty” by shifting the burden of proof to the State, requiring the State prove its case before transfer of ownership can occur.
4. Establish a common pool for holding forfeiture funds, to ensure funds do not go directly to law enforcement or prosecutors’ offices without proper due process.
5. Institute comprehensive, mandatory reporting requirements, provided by the benefitting office (including, by way of example only, where funds are acquired, what form funds are obtained in, and what occurs in hearings).



Sowing the Seeds of Justice

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“ . . . [F]orfeiture is big; it’s a problem; and there’s something that you can do about it.”

— *Matt Miller, Institute for Justice*

- 1 The Heritage Foundation, available at <http://www.heritage.org/research/reports/2014/03/civil-asset-forfeiture-7-things-you-should-know>.
- 2 Texas Crim. Code, Title 1, Ch. 59, Art. 59.05(b).
- 3 *Journal of Criminal Justice* 39 (2011), p. 277.
- 4 *Id.*
- 5 *Civil Asset Forfeiture Reform in Texas*, Texas Public Policy Foundation, Center for Effective Justice (2014), p. 10.
- 6 See “Forfeiting Justice: How Texas Police and Prosecutors Cash in on Seized Property,” Institute for Justice (2010), p. 2.
- 7 See *Taken*, *The New Yorker*, August 12, 2013, available at <http://www.newyorker.com/magazine/2013/08/12/taken>.
- 8 See “Race and Civil Asset Forfeiture: A Disparate Impact Hypothesis,” 16 *Tex. J. on Civil Liberties & Civil Rights* (2010), pp. 1, 10-11.