

# No Honor Among Government Thieves: The Evil of Asset Forfeiture

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The practice of law enforcement agencies in the United States seizing private property is one of the clearest examples of how much power the government has been permitted to gain. Although the idea of forcibly appropriating the assets of citizens as punishment for violation of the law has been practiced on the North American continent for hundreds of years, for a long time it was only used infrequently and was generally ignored by law enforcement.

There were only a handful of timeframes and circumstances when civil asset forfeiture was used with any regularity, such as in enforcement of the British Navigation Acts of the 1600s or of Prohibition laws in the 1920s and early 1930s. The excessive outgrowth of the predatory practice of asset forfeiture as we know it today has been a relatively recent development.

The spark that started this wildfire was the Comprehensive Crime Control [Act](#) of 1984, part of an appropriations bill signed into law by President Ronald Reagan. This piece of legislation vastly expanded the ability of law enforcement to use asset forfeiture. For example, it authorized courts to issue warrants for property seizure in the same way they would issue search warrants—which is to say, based on probable cause rather than criminal conviction. Citizens could now lose their property without having been found guilty of any crime. It also allowed courts to order the forfeiture of “substitute assets” if the original property deemed to have been associated with a crime was not able to be seized. (See Title III of this Act for a comprehensive list of allowances made for asset forfeiture.)

Importantly, it also set up significant financial incentives tied to asset forfeiture by allowing for the retention of forfeited property and by creating an arrangement whereby state and local agencies can share seizures with federal agencies. This arrangement has come to be known as “equitable sharing.” Under this arrangement, these state and local agencies are allowed to keep up to 80 percent of the proceeds of whatever seizures they share with federal agencies. This perverse cash incentive allows police to garner more revenue for their department the more private property they take away from citizens, and the same

bill which paved the way for that dynamic also established that they can take just about anything without needing a criminal conviction or a preponderance of evidence. All they need is probable cause.

Even though the legal requirements for seizure are extremely low, there have been an aggravating number of cases in which property was taken without even meeting them. In 2014, the *Washington Post* analyzed seizure records from the Department of Justice to understand how prevalent asset forfeiture was. In their [report](#), they show that in the time between September 11, 2001, and their study in 2014, there had been 61,998 completely warrantless cash seizures made on highways and shared with federal agencies through the Equitable Sharing Program, constituting \$2.5 billion in takings.

Only one-sixth of these cases were legally challenged, and within that one-sixth only 41 percent of people were able to get their stolen money back. Of the \$2.5 billion taken, \$1.7 billion was transferred back to the state and local agencies who had taken the money in the first place, meaning those agencies were enriched with 68 percent of the cash they took without any probable cause.

But, even as predatory as police who engage in this sort of behavior might be, it turns out they are not at the top of the food chain. The local and state governments that oversee these agencies can and often do offset the police department's budget in some proportion to the amount of revenue which that department generates by using civil asset forfeiture.

At a glance, it seems perfectly unremarkable that governments would give less money to departments that are generating revenue on their own, but a [study](#) conducted by researchers at the National Bureau of Economic Research dug deeper and found interesting relationships between certain circumstances and the degree to which police budgets tend to be offset. The earlier mentioned Equitable Sharing Program exists for state and local agencies to share their seizures with federal agencies, but each state also has their own avenues and accompanying rules for handling seizures.

Agencies are not required to share with both their state and the federal government at the same time. They can choose one or the other. But if they share with the federal government, they can get as much as 80 percent of their spoils back. Many state governments' arrangements are not as generous as this, so it may seem like the clear choice for any and every department to go through the Equitable Sharing Program. Interestingly, the Bureau's study found that state and local governments would offset their police's budget by nearly the full amount of their forfeiture revenue if those police used the Equitable Sharing Program and offset the same budget by a smaller amount if those same forfeitures were shared with the state instead.

The reason for this disparity is not obvious from the empirical data collected and analyzed in the study, but some reasonable conjectures can be made. State governments do not directly receive any of the proceeds from seizures shared through the Equitable Sharing Program, but they can profit from seizures shared with them instead. It could simply be that those state governments want a cut of the cash. It could be that these state governments see the use of the Equitable Sharing Program to step around their own rules and regulations, and they seek to punish departments for their perceived insubordination. This one is a long shot, but maybe there is even a state out there that sees Equitable Sharing as perverse and corrupt and simply wants to keep their police from using such a program.

In any case, the irony of this second layer of thievery is that it effectively counters the financial incentives that exist for civil asset forfeiture. The aforementioned study found that police respond to net incentives, meaning the more of their asset forfeiture spoils are taken from them in the form of budget offsets, the less inclined they are to seize private property. It could be a rare case of bureaucrats' self-directed behavior affecting a positive outcome.



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