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Solutions to Iowa's broken forfeiture system

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State and federal forfeiture reforms are necessary to correct abuses documented last week by a Des Moines Register investigation, civil and property rights advocates say.

And unlike with other hot-button topics, the push for change is coming from people or groups frequently on opposite sides of social and political issues. An example: U.S. Sen. Chuck Grassley, R-Ia., and state Sen. Joe Bolckom, D-Iowa City, are part of bipartisan efforts at the state and federal levels.

"It's a tool of law enforcement, but it can be an abused tool of enforcement because of the perverse incentives that are connected with it," Grassley said last week.

Recommendations range from tightening rules on how law enforcement agencies can spend forfeited funds to requiring a criminal conviction before property can be seized.

Among the problems identified by the Register's four-month investigation:

- Iowa law enforcement agencies collected nearly \$43 million from at least 5,807 forfeitures since 2009, the bulk of that from motorists stopped for minor traffic violations.
- A sampling of about 600 cases from six Iowa counties that are among the most active in seizing cash and other property showed dozens of examples in which no record could be found of an arrest or criminal charge. Authorities took substantial amounts of cash or other property based on the belief it was linked to criminal activity.
- Iowa's civil forfeiture statutes allow law enforcement agencies to keep or split nearly all of the proceeds they seize, generating millions of dollars to be used by local police and prosecutors.
- The appeal system is complex and often costly, placing the burden on property owners to prove in a civil court that their possessions are not connected to crime. (That contrasts with criminal cases, where the state bears the burden of proving guilt.) Attorneys are often reluctant to take such cases or demand payment up front because the threshold for winning is stacked in favor of police and prosecutors.

- Iowa law enforcement officials have occasionally used the proceeds in questionable ways, including paying for tropical fish, scented candles, water and sewer bills, and other items that appear to have little or no direct link to law enforcement activities, as state rules require.
- Police sometimes fail to document the items they seize. Iowa law does not specify procedures agencies must use to collect or inventory seized property. Some property owners accuse officers of skimming off cash.

State and federal civil forfeiture laws have been used in Iowa and other states for decades, and were intended as a powerful tool to rein in drug lords and organized crime kingpins by depriving them of ill-gotten gains.

Nationally, federal forfeiture laws were used to seize nearly \$4.5 billion in 2014, up from \$27 million in 1985. In Iowa, seizures under the state's forfeiture law have more than doubled, from about \$2 million in 2009 to nearly \$5 million last year.

But as U.S. law enforcement agencies ramped up seizures in recent years, the use of civil forfeiture has come under renewed scrutiny, and abuse claims have risen.

The CATO Institute, a conservative think tank, has been calling for forfeiture reforms for nearly 20 years. More recently, the American Civil Liberties Union and the Institute for Justice, a nonprofit public interest law firm based in Arlington, Va., have joined the chorus calling for a closer look at forfeitures as a crime-fighting strategy.

"There is a concern that people are being almost bullied out of their property," said state Rep. Jake Highfill, R-Johnston, who wants civil forfeiture abolished in Iowa. "I think this is a property rights issue and a civil liberty issue."

Some changes have already taken place.

U.S. Attorney General Eric Holder in January announced a new policy that restricts local and state police agencies from using federal law for forfeitures.

And in February, IRS Commissioner John Koskinen told Congress that his agency will no longer seize bank accounts of those who routinely make deposits under a \$10,000 reporting threshold unless there is evidence of criminal activity.

But some critics say the IRS and U.S. attorney general's reforms are not enough. Loopholes in federal law will allow the system to continue much as before, they say.

Additionally, most states — including Iowa — have their own forfeiture laws that groups such as the Institute for Justice have determined to be as questionable as federal law or even more so. The institute ranks Iowa's law among the nation's worst.

In response to some of the concerns, Iowa lawmakers are considering changes to forfeiture practices. Senate File 467 would generally eliminate forfeitures that do not include criminal prosecutions.

A few other states have already made changes similar to what's being proposed in Iowa. Minnesota [lawmakers last year banned civil forfeitures](#), and New Mexico lawmakers approved a similar law in March.

Bolkcom, who introduced the Iowa bill on March 11, said it's likely too late in the legislative session for it to become law this year. But legislators on the State Government Oversight Committee announced last week that they will hold hearings in the next few weeks to review issues raised by the Register's series.

Gov. Terry Branstad said last week that he also supports taking a new look at the state's forfeiture procedures in light of the issues raised by the Register investigation. But he stopped short of saying he would support an end to forfeitures that do not include criminal charges or convictions, saying he would need to study the issue further.

Official opposition to reform — particularly from groups profiting from the current system — is yet to be seen. Lobbyists for the Iowa State Police Association and the Iowa State Sheriffs' & Deputies Association have registered as "undecided" on the Iowa bill.

In interviews with the Register, advocates or longtime users of civil forfeiture defended the system, saying it has helped cut crime. Corwin Ritchie, executive director of the Iowa County Attorneys Association, said forfeiture in Iowa has been used responsibly. He defended its use in conjunction with cases that don't involve criminal charges.

Even some groups that are calling for civil forfeiture reform, like the Heritage Foundation, do not advocate its complete demise. They're calling for a more nuanced approach.

"We do see a place for legitimate asset seizure, provided there are adequate protections for property owners," said the foundation's Andrew Kloster, who studies civil forfeitures nationwide.

Report card

Iowa is rated among the worst states in the United States for protecting innocent people from government forfeiture, according to the Institute for Justice. The nonprofit public interest law firm based in Arlington, Va., gave Iowa's forfeiture law a D- as part of its 2010 study titled "Policing for Profit."

Here's why:

- Iowa's civil forfeiture laws place a heavy burden on property owners. Under state law, the prosecutor must prove only by a preponderance of evidence that the property is related to criminal activity.

- Once the prosecutor meets that burden, the burden is on the property owner to show his innocence, or in other words, that he did not know and could not have reasonably known of the conduct or that he acted reasonably to prevent the conduct giving rise to the forfeiture.
- Law enforcement receives 100 percent of the value of any property seized.
- Law enforcement agencies are not required to report proceeds from forfeitures.

FINDERS, KEEPERS

MARCH 29: Iowa's civil forfeiture law yields millions for law enforcement agencies, but is rated one of the nation's most unfair.

MARCH 30: Lack of transparency makes it hard to track where the money goes. Some is spent in questionable ways.

MARCH 31: Some property owners question police procedures for accounting for their seized cash and other assets.

TODAY: Many agree that Iowa's civil forfeiture system is broken. What can be done to fix it?