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Our View: State must limit 'policing for profit'

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They say crime doesn't pay — unless, that is, you are a law enforcement agency that profits from seizing the property of suspected criminals.

Civil asset forfeiture laws allow the government to take cash, cars, boats, homes and other property suspected of being involved in criminal activity. The emphasis is on "suspected," because unlike criminal forfeiture, civil forfeiture does not require that the property owner even be charged with a crime to permanently lose his property.

Law enforcement agencies auction off the seized property and keep most or all of the proceeds for their own use, such as for purchasing equipment. This creates a perverse incentive for law enforcement to aggressively pursue civil forfeiture — what critics have dubbed "policing for profit" — which can lead to abuses of individuals' property and due process rights.

Civil forfeiture grew in popularity with the War on Drugs, but has since expanded to encompass a variety of (alleged) crimes. According to the Cato Institute, a libertarian think tank in Washington, Justice Department seizures went from $27 million in 1985 to $556 million in 1993 to nearly $4.2 billion in 2012. And since 2001, the federal government has seized $2.5 billion without either bringing a criminal action or issuing a warrant.

The practice is particularly popular at the state level. In the 1990s, then-Volusia County Sheriff Bob Vogel gained national attention for his department's aggressive use of property seizures along Interstate 95. His department seized $6.5 million in cash from cars — 90 percent of which were being driven by African-Americans or Hispanics. In three-fourths of the cases, no charges were filed.

The feds provide increased incentive for civil forfeiture through its "equitable sharing" program, in which Washington invites state law enforcement to turn seized assets over to the federal government; thus, the forfeiture is made under federal law. The federal government then offers to share up to 80 percent of the proceeds with cooperating state and local law enforcement.

Property owners can contest the seizures, but the government's burden of proof often is lower than in criminal cases. For instance, the standard of evidence in Florida is "clear and convincing," which is less than "beyond a reasonable doubt" employed in some states, but above "preponderance of the evidence" or "probable cause" used in others. Most states require property owners to prove their innocence.

That's if the owners even sue to regain their property. According to the American Civil Liberties Union, many people can't afford to hire a lawyer to contest the seizures, and for those who can the fight often costs more than the value of the property seized.

Thankfully, there is movement on civil forfeiture reform. U.S. Attorney General Eric Holder recently announced the Justice Department would limit the "equitable sharing" program. The DOJ acknowledges that the new restrictions would have affected only about 3 percent of the value of all forfeitures over the last six years. Still, it's a step in the right direction, and the move brings needed national attention to the issue.

In Florida, whose civil asset forfeiture law earned a "D" grade from the Institute of Justice, a property rights public-interest law firm, Sen. Jeff Brandes, R-St. Petersburg, has indicated he will pursue reform in the upcoming legislative session. He says he would like to see proceeds from seizures go to charity, city and county governments or the state's general revenue funds so as to remove the incentive from law enforcement to seize property for its own gain. He also says he might seek to require a conviction before police can seize property.

Taking property that is used in the commission of a crime or is the fruit of such activity can be a legitimate exercise. But it must be done with streamlined due process, a high standard of evidence for government and without the incentives to tailor law enforcement activities toward boosting revenues.