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## Federal Loophole Thwarts State Curbs on Police Seizures of Property

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Over the past three years, Melisa Ingram, a 50-year-old Detroit resident, has had her 2017 Ford Fusion seized twice by the Wayne County Sheriff's Office. The officers claimed that Ingram's ex-boyfriend, who had her car at the time of the seizures, was involved in illegal activity.

Under Michigan's civil asset forfeiture law, the police could seize and sell the car if they suspected it was involved in a crime—even though Ingram hadn't been arrested for, let alone convicted of, anything at all.

"They told me they observed him doing something with a prostitute and I explained to them that it wasn't me driving the car," Ingram told *Stateline*. "All I wanted was my car because I had no way to get home from work. It was just a case of bad luck."

Ingram, a supervisor at Blue Cross Blue Shield, paid more than \$1,300, including towing and fees, to get her car back in January 2019, according to *The Detroit News*. After the second incident, in June 2019, the county prosecutor's Vehicle Seizure Unit demanded she pay at least \$1,800. Ingram, facing bankruptcy, couldn't afford to pay and lost her car.

In February 2020, Ingram joined two other plaintiffs in a class action lawsuit against Wayne County, which includes Detroit, challenging its vehicle seizure and civil forfeiture laws.

For more than three decades, criminal justice advocates and legal experts have pushed federal and state lawmakers to change or abolish laws that allow police officers to take property, money or assets from people who have not been convicted of crimes. Most states and the federal government have such laws, which funnel billions of dollars in proceeds to police and prosecutors.

Law enforcement agencies argue that civil asset forfeiture helps curb drug trafficking and other illegal activity. The practice takes the profit out of crime, they say, and gives police and prosecutors additional resources to fight it.

But critics across the political spectrum say the statutes give law enforcement a financial incentive to go after innocent people.

Thirty-six states and the District of Columbia have taken steps to scale back their civil asset forfeiture laws since 2014. But only Maine—which enacted a law this year—Nebraska, New Mexico and North Carolina have completely abolished the practice. Those states replaced it with a criminal forfeiture process that requires prosecutors to prove the property owner’s guilt, according to the Institute for Justice, a libertarian public interest law firm and leading advocate for overhauling the laws.

In large part, civil asset forfeiture continues in the rest of the states because they have failed to close a giant loophole: the federal equitable sharing program.

That program allows state and local law enforcement officials to partner with the U.S. Justice and Treasury departments. Police agencies transfer seized property, money or assets to the federal government and receive up to 80% of proceeds from the sale of the property—regardless of state law.

Between 2000 and 2019, the federal government paid out \$8.8 billion to state and local agencies participating in the equitable sharing program, according to a report released last year by the Institute for Justice. The states that participate most heavily in equitable sharing are California, Massachusetts, New York, Rhode Island and Texas.

### **Lower Standard of Proof**

To seize property under civil forfeiture laws, the government doesn’t have to prove that the owner was involved in illegal activity. It just has to demonstrate that the property was connected to a crime.

“The fact that the burden of proof is so low for government prosecutors just provides such weak protections for property owners,” said Grey Gardner, senior staff attorney at the Drug Policy Alliance, a nonprofit organization that opposes punitive drug laws. “I think it alarms a lot of people on the right and the left.

“When people know the government is effectively taking people’s property without sufficient due process, without criminal charges ... they’re disgusted by that,” Gardner told *Stateline*.

But John Flynn, president-elect of the National District Attorneys Association, said civil asset forfeiture laws are a valuable crime-fighting tool.

“We should not let drug dealers, or anyone involved in any kind of financial scam or Ponzi scheme, reap the benefits for their illegal actions,” Flynn said. “It’s a punishment. I don’t want drug dealers benefitting from poisoning our children and then keeping the money.”

Flynn said prosecutors don’t want innocent people to lose their belongings, but that civil asset forfeiture should be altered, not abolished. He also dismissed the assertion that police and prosecutors support the practice to “beef up their budgets.”

Opponents of civil asset forfeiture argue that the practice rarely takes down big-time criminals. In the 21 states with available data, the median currency forfeiture was just \$1,276, according to the Institute for Justice report.

Only a handful of states even try to track how often they seize property from people who are never convicted of a crime, the Institute for Justice found, and the data is unreliable.

“You’re talking about hundreds of thousands of forfeitures that are initiated every year,” said Clark Neily, senior vice president for legal studies at the Cato Institute, a libertarian think tank based in Washington, D.C. “[But] police are generally pretty bad about collecting data about all kinds of practices, not just civil forfeiture.”

One fact seems clear, however: Civil asset forfeiture disproportionately affects people of color.

In a 2020 study published in the *International Public Management Journal*, researchers from Indiana University and Arizona State University analyzed forfeitures by 2,278 municipal police departments between 1993 and 2007 and found “a significant relationship between minority population share and reported forfeiture revenue.” Other studies and several media investigations, including a 2019 series by St. Louis Public Radio and a 2014 series in *The Washington Post*, reached the same conclusion.

“Given all the other factors of everything else happening in law enforcement and police action, [you can see] how that can lead to racial disparity issues here,” Isaac Safier, a San Francisco attorney who specializes in civil asset forfeitures, told *Stateline*. “If a guy is caught with a bag of cocaine in a fraternity house, the officers aren’t going into his father’s [investment] account and seizing all the money in [it].”

Safier said some of his clients are targeted because of their race. Many of them, he said, don’t have traditional bank accounts, which puts them at a disadvantage from the start.

“If a large percentage of a group of people are underbanked, then it’s going to be harder for somebody from that group to prove where their money came from and show the source of funds,” Safier said.

“If there’s an ethnic group that uses nonbanking or nontraditional banking methods such as lending circles, which are perfectly legal to raise funds for businesses ... the fact they don’t have the conventional paperwork makes it harder for them to prove their case.”

### **Maine Makes Big Changes**

Several state legislatures took up the issue of civil asset forfeiture this year, but only one made a significant change.

In Hawaii, House and Senate negotiators couldn’t agree on the final version of a bill that would have restricted forfeiture to cases involving a felony conviction. The measure also would have directed all forfeiture proceeds to the state’s general fund.

Nevada lawmakers debated a bill that would have made any forfeiture of property worth less than \$5,000 a criminal matter, rather than a civil action. It also would have prohibited police from seizing less than \$200 in cash or a vehicle worth less than \$2,000.

Supporters of the Nevada bill argued the changes would make it easier for property owners with less money to contest forfeitures. But police and prosecutors successfully lobbied against the measure, citing a loss in revenue and the weakening of a crime deterrent.

“We should remember that the purpose of forfeiture law is that crime should not pay,” John Jones of the Nevada District Attorneys Association told the *Las Vegas Review Journal*. “[The \$200 limit] means that crime can pay in increments of \$200 or less.”

But critics of civil asset forfeiture notched a huge victory in Maine, where a new law prohibits forfeitures except in cases where the owner of the property is convicted of a crime in which the property was involved. The measure, which became law without the signature of Democratic Gov. Janet Mills, also requires the Maine Department of Public Safety to post records of forfeited property on a public website.

Perhaps most significantly, it also bars Maine law enforcement agencies from participating in the federal equitable sharing program.

“We completely abolished civil asset forfeiture and repealed all statutes and moved everything over to criminal forfeiture which requires [a] conviction,” state Rep. Billy Bob Faulkingham, a Republican and the measure’s chief sponsor, told *Stateline*. “We also took it one step further ... [and] ended the federal equitable sharing program.

“I think civil asset forfeiture is one of the most outrageous violations of our constitutional rights,” Faulkingham said. “I would just hope that this bill is a beacon to other states to see it can be done and needs to be done and I hope that's a domino effect for other states to enact it.”