

## (No) Crime and Punishment

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On July 19, Attorney General Jeff Sessions authorized a significant policy shift at the Department of Justice that will lead to an expansion of civil-asset forfeiture—a controversial practice through which law-enforcement agents can take property they believe is related to or connected with criminal activity. What makes the practice controversial is that agents can seize property without ever having to prove that it was used in the commission of a crime, that it was purchased with the proceeds of a crime, or even show that a crime was actually committed.

Individuals and groups across the political spectrum have voiced opposition to the practice. Civil-asset forfeiture has been criticized by the right-leaning [Heritage Foundation](#), the left-wing [Center for American Progress](#), and the libertarian-leaning [Cato Institute](#). One of the drivers behind this broad opposition is growing evidence that the practice is used primarily not as a crime-fighting tool, but rather as a way to pad the budgets of law-enforcement agencies—something the Institute for Justice has documented in its recent report entitled [Policing for Profit](#). As James Copland and I pointed out in an [op-ed](#) for Fox News earlier this year, federal agencies don't even collect data to measure “how often seizures and forfeitures advance or relate to criminal investigations.” An Office of the Inspector General report in March evaluated a sample of 100 forfeitures initiated by the Drug Enforcement Agency (DEA). Of those, the DEA could verify only 44 as having “advanced or having been related to criminal investigations.”

In a [statement](#) published in early March, Justice Clarence Thomas indicated that, in its current form, civil-asset forfeiture might even be unconstitutional, noting that “[t]his system—where police can seize property with limited judicial oversight and retain it for their own use— has led to egregious and well-chronicled abuses.” These abuses, which have even drawn the ire of [late-night TV](#) host John Oliver, have helped spark reforms across the country. As the Institute for Justice has noted, since 2014, 24 states have reformed their civil-forfeiture laws, and 14 now require a criminal conviction *before* property can be forfeited.

Despite all this, a DOJ [policy directive](#) issued late last month at the behest of Attorney General Sessions reversed one of the few positive policies enacted under former Attorney General Eric Holder. The directive will allow Department of Justice components and agencies “to forfeit assets seized by state or local law enforcement.” After the property is forfeited, the federal

government can then share up to 80 percent of the property with local agencies, giving the agencies a significant incentive to seize cash and other valuable property on behalf of the feds.

Sessions's decision will likely lead to a sharp increase in the amount of property taken by government agents. In 2014, an accounting of deposits to the Department of Justice Assets Forfeiture Fund by state showed deposits totaling more than \$4.4 billion. The DOJ's "Equitable Sharing" program, under which seized property was "adopted," was significantly curtailed by Attorney General Holder in 2015. The following year, an accounting of deposits to the fund by state showed that the total had fallen by more than half, to \$1.9 billion.

Sessions's policy directive also undermines many hard-fought state-based reforms. In the 24 states that have reformed their civil-asset forfeiture laws, police will, in all but a few jurisdictions, now be able to side-step *state*-imposed limits by seizing property on behalf of the *federal* government, who can then kick back a portion of what's taken. In essence, the federal government, with a swipe of a bureaucrat's pen, is now offering payouts to state agencies willing to contravene the political choices of the citizens they are sworn to protect. Only eight states and the District of Columbia have anti-circumvention provisions on their books: Pennsylvania recently adopted legislation forbidding state law enforcement from seizing property on behalf of the federal government. Writing for the Washington Post's Volokh Conspiracy blog, Professor Ilya Somin called Sessions's policy directive "a menace to federalism."

Sessions's revival of the Equitable Sharing program highlights the need for real, legislative federal reform. Anything that can be done with a pen and a phone can be undone by the same; unfortunately, this case shows that a powerful federal official can also essentially undo what was done at the ballot box—and by that, we should all be troubled.