



Criminal & Civil Asset Forfeiture

Executive Summary

Criminal and civil asset forfeiture is the seizure of assets that are connected to a crime or suspected to be associated with criminal activity. Seized assets can be returned, transferred to a federal agency, or diverted to other state funds. Asset forfeiture was intended to reduce crime by reducing the financial gains associated with crime (e.g., profits from selling illegal drugs) under the Comprehensive Crime Control Act of 1984 (CCCA). However, financial incentives created within the forfeiture laws may have potentially altered police incentives by allowing seized assets to fund law enforcement expenses in some states. In recent years, numerous states have reformed asset forfeiture legislation. Filed in the 2022 legislative session, Missouri HB [1613](#) prevents the transfer of seized assets to federal agencies.

Highlights

- Research investigating the effects of the CCCA reported a 17% reduction in nonviolent crimes from 1984 to 1992 and a 37% increase in drug-related arrests from 1989 to 1992.
 - There was a 22% increase in traffic fatalities, suggesting efforts were reallocated from traffic safety enforcement to drug enforcement.
- In 2021, the total property (overall dollar value) seized in Missouri was \$5,353,274; this is a 41.2% reduction in the overall dollar value of property seized in 2018 (\$9,102,717).
 - The forfeiture amount varies dramatically between counties.
- Eight states and Washington, D.C. have enacted varying legislation to block local agencies from transferring seized property to federal agencies.

Limitations

- Missouri law requires reporting of forfeitures to the state in each calendar year, but pending dispositions at the year's end will not appear in future reports. Therefore, asset forfeiture reports may underrepresent the total forfeitures each year.
 - In 2021, 47.5% of forfeitures were pending transference or no transference was conveyed.

Research Background

Civil and Criminal Asset Forfeiture

There are two types of asset forfeitures: 1) criminal or 2) civil. Criminal asset forfeiture is the seizure of assets that are connected to a crime for which an offender was convicted. Civil asset forfeiture is the seizure of assets suspected to be associated with criminal activity, and the property may be seized even if the person is not charged or convicted of a crime.¹

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Due to increasing crime and illegal drug use throughout the United States during the 1960s–1980s, the federal government passed [The Organized Crime Control Act of 1970](#) (OCCA) to combat organized crime. Further law enforcement authorizations were expanded by the [Comprehensive Crime Control Act of 1984](#) (CCCA). It was under the CCCA that federal civil asset forfeiture permitted the local and state government to seize assets from people suspected of committing crimes. In order to handle the seized assets, the CCCA established the Assets Forfeiture Fund and the Equitable Sharing Program.^{1,2} Under this program, local agencies send the seized property to the federal government and may receive up to 80% of seized money or proceeds from the sale of seized assets. Depending on the state law, the proceeds can be used to fund law enforcement expenses or be diverted to other state funds (e.g., education).¹

Asset Forfeiture in the Criminal Justice System

The two primary considerations surrounding asset forfeiture are 1) crime reduction and 2) police incentives. Asset forfeiture was intended to reduce crime by reducing the financial gains associated with crime (e.g., profits from selling illegal drugs) while concurrently increasing police revenue and resources.² In a study investigating the effects of the CCCA on crime from 1984 to 1992, it was noted that changes in forfeiture opportunities led to a 17% reduction in nonviolent property crimes (e.g., burglary) in places where police could keep a large portion of their seizures.²

However, financial incentives created within the forfeiture laws may have potentially altered police incentives. Prior to the CCCA, state laws allowed between 0–100% retainment of seized property.² The enactment of the CCCA may have created new incentives in states that did not retain any seized property (Illinois and New York) compared to those with 100% retainment (Florida and Texas). In states that did not retain seized property, there were increased efforts towards combating drug crimes; specifically, drug-related arrests increased by 37% in these states from 1989 to 1992.² There was also a 22% increase in traffic fatalities, suggesting efforts were reallocated from traffic enforcement.² Furthermore, a study using data on federal equitable sharing payments to 600 local law enforcement agencies from 2000 to 2012 indicated that states with more restrictive (or fewer retainment laws) collect more in federal equitable sharing.³

Evidence also suggests forfeiture laws may disproportionately affect individuals of lower socioeconomic status and minority populations.^{3–5} Specifically, fiscally stressed municipalities with low resources have an increased arrest rate of minority population for drugs, DUI violations, and prostitution when state law permits law enforcement agencies to profit from asset forfeiture.⁵

Missouri Asset Forfeiture

According to the Missouri State Auditor Compilation of 2021 Criminal Activity Forfeiture Act Seizures, the total property (overall dollar value) seized in Missouri was \$5,353,274; this is a 41.2% reduction in the overall dollar value of property seized in 2018 (\$9,102,717).^{6,7} Of the \$5,353,274 seized, \$259,985 was returned, \$1,815,915 was transferred to a federal agency, and \$101,322 was

allocated to the state.⁶ At the time of this report, \$2,539,831 was pending transference, 631,050 other types of transferences, and no transference was conveyed for \$5,171.⁶ In 2021, there were 514 seizures reported, however, the forfeited amount varies dramatically between counties. The majority of asset forfeitures occur during traffic stops and low-level crimes.⁸ According to the Missouri 2020 Vehicle Stop Report, of the 28,691 traffic searches that resulted in contraband, 452 stops seized currency.⁹

In 2020, 146 law enforcement agencies reported participation in the federal equitable share system. During FY20, the agencies reported receiving \$9.5 million and spending \$7.8 million in federal forfeited funds.¹⁰

State Legislation

States and the federal government vary in the powers they grant to law enforcement to seize and forfeit cash, property and other assets that are associated with a crime or have suspected associations with illegal activity.^{1,3} Four states (NC, NM, NE, ME) have completely abolished civil forfeiture entirely and only use criminal law to forfeit property.^{1,11} Twenty states, including Missouri, require varying conviction provisions such as preponderance of evidence or clear and convincing evidence to engage in some or all forfeiture proceedings. Some states (e.g., AZ, CA, IA, OH) have laws that exclude property valued under a certain amount from the criminal conviction requirement.¹

Due to potential ambiguity within federal law and the Equitable Share Program, eight states (AZ, CA, CO, ME, MD, NE, NM, OH) and Washington, D.C. have enacted varying legislation to block local agencies from transferring seized property to federal agencies.¹¹ However, in certain occurrences it is permitted, such as a joint investigation with a federal agency or if seized property is under a certain monetary value.

Missouri Legislation

Currently, Missouri statute requires a criminal conviction or a guilty plea before property can be forfeited (RSMo [513.607](#)). However, the government can seize assets connected to a crime with a preponderance of evidence (RSMo [542.296](#)). In the event the innocent property owner wants their property back, they must intervene and prove the property was not a part of criminal activity (RSMo [513.615](#)). Missouri law requires that forfeiture money funds education ([MO Constitution IX § 7](#); RSMo [513.623](#)).

Missouri law does require reporting of seizures and forfeitures to the state auditor in addition to any criminal charges and the final disposition of the property (RSMo [513.607](#)). The report covers assets seized in each calendar year. Therefore, pending dispositions at the year's end will not appear in future reports, so asset forfeiture reports may underrepresent the total forfeitures each year. Missouri law does not prevent law enforcement from participating in the federal Equitable Share Program. Filed in the 2022 legislative session, HB [1613](#) prevents the transfer of seized assets less than \$100,000 to federal agencies.

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