

ISSUE BRIEF

No. 4181 | MARCH 26, 2014

Law Enforcement's Dependence on Civil Asset Forfeiture in Georgia and Texas

Evan Bernick

Law enforcement agencies across the nation use revenue derived from civil asset forfeiture to fund their operations. There is a certain appeal to the idea: The bad guys are deprived of ill-gotten or ill-used assets, and the good guys get to use those assets to pursue other bad guys. But there is reason to be concerned about law enforcement agencies becoming dependent on such self-funding, which takes place outside the normal legislative process.

This *Issue Brief* will focus on two states in which law enforcement agencies are heavily dependent on civil asset forfeiture: Georgia and Texas. These two examples demonstrate that dependence on asset forfeiture makes it difficult for citizens to hold law enforcement accountable. States should seek to reduce that dependence by using the normal budget process to fund law enforcement.

Forfeiture Dependence in Texas and Georgia.

In a 2001 survey of officials at nearly 770 law enforcement agencies, almost 40 percent reported that civil forfeiture proceeds were a necessary budget supplement.¹ But certain jurisdictions are more dependent on revenue from forfeiture than others. Because forfeiture takes place outside the normal legislative process, it is difficult to determine how much particular law enforcement agencies collect.

One can, however, work to determine how dependent agencies are on forfeiture as a means of generating revenue by comparing their budgets to their reported forfeiture proceeds.

In a 2010 report, *Policing for Profit*, the Institute for Justice (IJ) reported some staggering forfeiture numbers in Georgia and Texas. In Texas, law enforcement retains up to 90 percent of proceeds from civil forfeiture; in Georgia, it retains 100 percent.²

According to the IJ, in Georgia, the Cobb County sheriff's office (budget: \$12.4 million) took in \$9.5 million in forfeiture revenues in 2003—76 percent of its budget. The top 10 forfeiture-earning agencies in Texas, on average, take in about 37 percent of their budgets in forfeiture funds. The smaller agencies (those serving less than 1 million people) among Texas's top 10 forfeiture earners reported forfeiture proceeds in excess of 65 percent of annual budgets.³

The Problem with Forfeiture Dependence: Diminished Accountability. So why is this a problem? Why not celebrate the fact that these agencies are able to supplement their budgets without forcing taxpayers to foot the bill?

The answer is that such revenue collection makes it difficult for citizens to hold law enforcement agencies accountable for their spending. The legislative process is intended to ensure that public expenditures are made in the public's interest and minimize governmental self-dealing. Legislatures confront many constituencies vying for public funds, and while legislatures are not perfect, their decisions are intended to reflect substantive determinations about the relative worth of the programs they fund.

Allowing—or, worse, requiring—a law enforcement agency to obtain its funding through asset for-

This paper, in its entirety, can be found at <http://report.heritage.org/ib4181>

Produced by the Edwin Meese III Center for Legal and Judicial Studies

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

feiture removes many of the controls and oversights typically associated with public funding of government agencies. If an agency can raise funds on its own, it can spend those funds on its own. In so doing, it undermines legislative determinations as to how much funding that agency needs to further the public's interest and makes it more difficult for citizens to evaluate that agency's use of resources.

To be sure, if legislators were angels, civil forfeiture gains might be assessed critically as a part of an overall budget scheme, but given the political incentives at play, legislators who want to fund law enforcement free of political cost can be expected to claim their "free lunch" rather than vote for an unpopular tax hike or service cut.

Yet even if legislators were inclined to critically assess how law enforcement agencies use forfeited funds, they would not be able to do so, because many law enforcement agencies routinely fail to comply with reporting requirements. For example, Georgia law requires that local law enforcement agencies annually report and itemize all property obtained through civil forfeiture as well as what they do with it, but the IJ found that most Georgia law enforcement agencies and judicial circuits simply do not do so.⁴

Absent legislative constraints or oversight, and despite the good intentions of many law enforcement officials, it is hardly surprising to see examples of self-dealing by law enforcement agencies in Georgia and Texas:

- In Georgia, Fulton County district attorney Paul Howard spent \$344,000 in state forfeiture funds between 2008 and 2012, including \$2,700 on security doors for his house, \$4,450 on foot-

ball tickets, and \$6,000 on a lawyers group that inducted him into its hall of fame.⁵

- Residents of Camden County, Georgia, voted sheriff Bill Smith out of office after it became public that he used seized assets to purchase a \$90,000 sports car and a \$79,000 boat and to hire inmates to work on his, his girlfriend's, and his ex-wife's private property, among other expenditures that benefitted him personally.⁶
- In March 2008, Joe Garza, the district attorney for Texas's 79th Judicial District, was voted out of office in the wake of a public scandal regarding his use of forfeiture funds. An audit revealed that Garza distributed \$1.1 million to three favored employees between 2004 and 2008 and that many others may have received improper payments for "car allowances, stipends, reimbursements, advances, audits, travel (including to casinos), contract labor and other seemingly illogical purposes."⁷

Even where it does not give rise to such egregious abuses of the public's trust, forfeiture denies the public an opportunity to evaluate large expenditures by law enforcement. Recently, Harris County, Texas, sheriff Adrian Garcia announced that he wants to use forfeiture funds to outfit a Department of Defense surplus helicopter to the tune of \$400,000 for initial outfitting and an additional \$250,000 in annual expenditures thereafter. Harris County commissioner Jack Morman supported the idea, calling it "the perfect situation, where there is not any type of drain on the county's general (fund.)"⁸ It

1. John Worrall, "Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement," *Journal of Criminal Justice*, Vol. 29 (2001), pp. 171-187.

2. Marian R. Williams et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, Institute for Justice, 2010, pp. 54 and 92, http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf (accessed March 5, 2014).

3. *Ibid.*, p. 21.

4. See Erin Norman and Anthony Sanders, "Forfeiting Accountability: Georgia Law Enforcement's Hidden Civil Forfeiture Funds," Institute for Justice, March 2011, p. 5, http://www.ij.org/images/pdf_folder/other_pubs/forfeitingaccountabilityfinal.pdf (accessed March 5, 2014).

5. Associated Press, "Report: Fulton DA Spent Public Funds on Parties," June 7, 2013, <http://onlineathens.com/local-news/2013-06-07/report-fulton-da-spent-public-funds-parties> (accessed March 25, 2014).

6. Williams et al., "Policing for Profit," p. 19.

7. *Ibid.*, p. 18.

8. Kiah Collier, "Sheriff Seeks County OK to Accept Donated Helicopter," *Houston Chronicle*, July 18, 2013, <http://www.adriangarcia.com/2013/07/18/sheriff-seeks-county-ok-to-accept-donated-helicopter/> (accessed March 25, 2014).

will, however, require more forfeiture revenue, and the fact remains that law enforcement is now poised to spend hundreds of thousands of dollars annually on a new helicopter without justifying that decision to the public.

Bad Outcomes. Georgia, Texas, and other states that are dependent on asset forfeiture for law enforcement funding should seek to reduce that dependence. Failure to channel revenue-raising decisions through the normal legislative process can produce bad outcomes because of diminished

accountability. Worse, even where it does not lead to abuse, it may lead to important decisions about public resources made without effective public oversight.

If law enforcement agencies in Georgia and Texas find that they cannot carry out their mission at their current budget level, they should be able to convince legislators of the necessity for additional funding.

—*Evan Bernick is a Visiting Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.*