

## DRUG-RELATED ASSET FORFEITURE DISTORTS LAW ENFORCEMENT PRIORITIES IN WASHINGTON STATE

### PROBLEM

Washington State allows law enforcement agencies to retain 90% of the net proceeds from drug-related assets seized, and requires that these funds be used “exclusively for the expansion and improvement of controlled substances related law enforcement activity.”<sup>1</sup> Additionally, the evidentiary burden that a seizing agency must meet is very deferential to law enforcement. Evidence suggests that the combination of tremendous financial incentives and limited property rights distorts drug-related priorities, and pressures police to make operational decisions to maximize perceived financial rewards. The result is a financial incentive to continue drug-related practices that have a disparate impact on racial minorities.

### KEY POINTS

- **Drug-related asset forfeiture is an important tool for law enforcement.** Forfeiture laws reduce the incentive for financially-motivated crimes, such as drug trafficking, by removing the assets that help make such activities profitable.
- **However, allocating 90% of the net proceeds from drug-related asset forfeitures to the seizing agency creates a conflict between an agency’s economic self-interest and traditional law enforcement objectives.** RCW 69.50.505 creates a perverse dependence whereby law enforcement agencies rely upon assets seized during drug investigations to fund their operations. This dependence inevitably skews how law enforcement agencies allocate their resources, and affects operational decisions regarding whether to target particular crimes and how to exercise discretion when making arrests. Legitimate goals of crime prevention are compromised when salaries, equipment, and departmental budgets depend on how many assets are seized. Eight states have enacted reforms to end the direct profit incentive under Washington’s drug-related asset forfeiture laws by placing forfeiture revenue into a neutral account, such as education, drug treatment, or, ideally, in the general treasury of the city, county, or state government that oversees the seizing agency.<sup>2</sup> The evidence suggests that this single measure would cure the forfeiture law of its most corrupting effects. So long as police agencies can expect a financial reward for asset seizures, they will remain dependent on current tactics that have a disparate impact on racial minorities.
- **The standard of proof in Washington State for the government to successfully claim property through asset forfeiture is one of the lowest in the country.** RCW 69.50.505 only requires that a law enforcement officer have “probable cause” to believe the property is linked to criminal activity. If a property owner challenges the seizure, the burden is only slightly increased to “preponderance of the evidence.” Requiring seizing agencies to demonstrate with “clear and convincing” evidence that the assets seized were

---

<sup>1</sup> RCW §§ 69.50.505(9) – (10). The remaining 10% of the net proceeds are deposited into the state general fund.

<sup>2</sup> Indiana, Maine, Maryland, Missouri, North Carolina, North Dakota, Ohio, and Vermont, distribute 0% of the proceeds to law enforcement.

linked to criminal activity would help protect property owners from arbitrary seizures.

- **Despite the substantial property interests involved, indigent defendants do not have a right to appointed counsel when challenging an asset seizure.** Because indigent defendants tend to be people of color, minority property owners are at a distinct disadvantage, and bear greater risks that their assets will be liquidated. Providing counsel for indigent defendants would help protect property interests that are often key to their livelihood.
- **Asset forfeiture has a disparate impact on racial minorities.** The combination of financial dependence and limited procedural safeguards reinforces drug-related law enforcement tactics that University of Washington researchers have found to have a disparate impact on racial minorities. Two-thirds of those arrested for delivery of a serious narcotics offense in Seattle are Black. Consequently, because a drug arrest automatically renders much of a defendant's property seizable, RCW 69.50.505 has a disparate impact on defendants of color.
- **Many property owners whose assets are seized are never charged with a crime, or are never convicted.** Investigators at the *Seattle Post-Intelligencer* found that 20% of people whose property was seized were never charged with a crime, and that 40% of the time there is no conviction.

#### LIST OF ENCLOSED MATERIALS:

- Marian R. Williams, et. al., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, INSTITUTE FOR JUSTICE (March 2010), available at [http://www.ij.org/index.php?option=com\\_content&task=view&id=3114&Itemid=165](http://www.ij.org/index.php?option=com_content&task=view&id=3114&Itemid=165).
- Eric D. Blumenson & Eva Nilsen, *The Next Stage of Forfeiture Reform*, 14 Fed. Sent. R. 76 (2001).
- Eric Blumenson & Eva Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. Chi. L. Rev. 35 (1998).

## STATISTICS

### Washington State's Drug-Related Forfeitures as Reported to Law Enforcement Management and Administrative Statistics (LEMAS)

	<b>Total Assets Forfeited</b>	<b>Assets Forfeited on Average per Law Enforcement Agency</b>
1993	\$5,599,939	\$58,598
1997	\$4,303,441	\$16,255
2000	\$5,546,859	\$20,544
2003	\$16,120,891	\$96,321

### Total Drug-Related Currency Forfeitures in Washington, 2001-2006

Year	Amount
2001	\$705,084
2002	\$680,645
2003	\$986,400
2004	\$824,390
2005	\$1,329,935
2006	\$866,406
Total	\$5,392,860
Average	\$898,810

Source: LEMAS