



Texas Criminal Justice Coalition

Reform Asset Forfeiture

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Executive Summary

The Texas Criminal Justice Coalition (TCJC) recently reviewed civil asset forfeiture case files for Travis County.¹ Our results reinforce concerns raised by the Institute for Justice, the Texas Public Policy Foundation,² and others, but also raise new concerns:

- As others have found in studies across the country, the majority of cases involve forfeiture of relatively small amounts of cash. The median cash forfeiture in this study is \$4,451. Twenty-two percent of cases involved less than \$2,000.
- Travis County quickly settles most cases if the owner of the property gets an attorney. The settlement gives a portion of the money back in amounts that vary widely but cluster around 50% and 20% of the original amount seized. Two out of 10 people got their cars back.³

The Problem

On April 9, 2015, Joe T., a man with no prior criminal history, was pulled over by a Travis County Deputy for speeding. The officer saw a bag in plain sight and asked him about it. Mr. T. told him the bag contained money garnered selling a car on Craig's List the week before. Mr. T told the deputy he didn't want to leave the money at home because he didn't trust it with his brother.

Mr. T. gave the officer consent to search his car. According to the officer, when asked about a white powder on the car seat and suspected marijuana leaves in the floorboards, Mr. T. explained that his girlfriend smokes pot. The officer arrested Mr. T. for possession of less than a gram of a controlled substance and confiscated several thousand dollars in cash.⁴

Nearly a month later, the government filed a civil forfeiture action against Mr. T's cash.⁵ From April 9 to May 4 there was no procedure Mr. T. could follow to protest the seizure of his cash.⁶ He got a lawyer, who protested the seizure once the process was started. Meanwhile, the DA was unable to bring a criminal case based on the scant evidence from the traffic stop. Mr. T. was never formally charged with any crime. The grand jury "no-billed" Mr. T in February, 2016,⁷ and Mr. T. got his money back on March 18, 2016, nearly a year after it was initially seized.⁸ According to his attorney, Mr. T. is now trying to get the arrest expunged from his record.

There's a lot wrong with what happened to Mr. T., and the Fourth of July is a good time to take a closer look at the reasons why we should all care about civil asset forfeiture and its abuse.

Our founders believed that people should have the right to be free from the search and seizure of private property without cause. John Adams famously credited frustration over "writs of assistance" – general warrants authorizing Royal forces to ransack homes in search of contraband – with igniting our nation's fight for independence.⁹ It is certainly why we now enjoy the 4th Amendment protections the framers proposed as amendments to our nation's constitution in 1789.

Civil asset forfeiture as we know it today is a product of the war on drugs. Ramped up in the early 1980s as a vehicle to diminish the strength of drug lords, it was expanded in 1984 with the creation of “equitable sharing” – a fund that pools forfeited assets and redistributes them to law enforcement.¹⁰ Texas’ civil asset forfeiture statute originally passed in 1989.¹¹

Much has been written about the problem created when police confiscate cars or money from people at traffic stops, requiring those who can afford it to hire attorneys and wait weeks or months to have their property returned.¹² But the available data tells us very little about the scope of the problem or why prosecutors insist that requiring a criminal conviction before completion of a forfeiture would harm public safety.

Study Findings

To shed some light on this issue, TCJC reviewed 151 recent Travis County cases in which officers seized nearly \$2 million in cash, along with cars, guns, drugs, and gaming equipment.

- The median amount of cash seized was \$4,451. Six significant cash seizures from five individuals accounted for 48% of the total amount seized during the 16-month study period. Meanwhile, 22% of the asset forfeiture cases were filed over less than \$2,000.
- Travis County launches the civil asset forfeiture case an average of 19.9 days after the incident. During this nearly three week period, there is no recourse for the property owner or a family member because there is no official forfeiture case to dispute.
- In general, these cases are rapidly closed, either by default judgment or settlement. On average, the cases closed 100 days after the original filing. When an owner does not get an attorney, Travis County keeps the forfeited assets after a “default judgment,” which takes 69 days on average. When an owner does get an attorney, cases generally close in 125 days (average), although nearly a quarter of the cases were still open at the time TCJC reviewed the data. The still-open cases included the very largest forfeitures totaling more than a half million dollars.
- The related criminal case is on a much longer timeline. TCJC was unable to analyze criminal case outcomes because only the very oldest cases in the dataset had been completed. We can say that Travis County generally takes ownership of seized money long before the owner is proven guilty.
- In 53% of the cases (82 cases), the assets were represented by an attorney or the owner actively fought the case pro se (without an attorney). Of the 65 cases represented by an attorney that are not still open, 48 or 74% resulted in the return of some money back to its owner in a settlement agreement. Of the total of \$756,384 taken from these individuals, Travis County eventually returned a total of \$204,904.50, or about 27% of the cash (plus one automobile.) The cash settlements ranged from 100% of the original amount seized to just 9% of the original amount seized, and numerically they clustered at 50% and 20% of the original amount seized.
- 44.5 percent of closed cases (53 cases) closed with a default judgment. In all of these cases, no money was returned to the original owner.
The forfeiture cases were filed against money or cars, while the drugs and gaming equipment also seized were not included in the civil forfeiture. The drugs and gaming equipment were all seized under normal criminal seizure law as part of the criminal investigation.

Major Takeaways

Let us start with the biggest question: Were these forfeitures related to crimes? According to the affidavit filed at the time of the forfeiture, the officers believed so, yes. But that is a long way from “innocent until proven guilty.” The mere fact of possessing cash in a car or airport can create the suspicion that the money is contraband.¹³

The forfeiture process, whether closed by default judgment or settlement negotiation, moves quickly relative to the criminal process. People arrested at the time of the seizure who can’t afford bail may remain in jail through the entire process and with little ability to defend against the loss of their money or car. If an owner *can* hire an attorney, the chance of having some money returned immediately improves. Nothing in the case files indicate why the District Attorney was willing to return money as part of a negotiated settlement in any individual case.

The related criminal case may take months or even longer to resolve. TCJC was unable to conclude anything about the final adjudication of the criminal cases in this dataset because most criminal cases were still open. **While Travis County clearly *tries* to close civil forfeiture cases quickly, the significant number of forfeiture cases that remain open as the criminal case proceeds through a longer process may indicate that it is reasonable to pend an asset forfeiture proceeding until a criminal case is complete.**

The use of civil asset forfeiture to seize and keep small dollar amounts stretches the original purpose of the statute to the break point. Designed to help law enforcement strip the assets from drug lords and organized crime networks, these cases reveal a broad application of forfeiture to lower-level drug offenders. Case files reveal people trying to demonstrate (with little documentation) that money seized came from a social security check or day labor.

Recommendation

The Texas Criminal Justice Coalition strongly recommends that civil asset forfeiture take place only after the conclusion of a criminal case so that only people convicted of a crime lose the related cash or vehicle. Our study indicates that this may already occur in some instances.

Civil forfeiture should not be used as a way to ratchet up the punishment of individuals with low-level offenses. While prosecutors understand that asset forfeiture is not formally an additional punishment, the low-income people who just had their money or car taken do not reasonably see the difference.

References

¹ The Texas Criminal Justice Coalition requested under the Public Information Act all cause numbers for civil asset forfeiture cases filed by the Travis County DA's office in any Travis County court from Jan. 1 2015 to the April and received a list of 151 civil asset forfeiture cases filed in Travis County from Dec. 8, 2014, to April 21, 2016. We read each case file, recording filing dates, information about the items forfeited, presence of an attorney for the assets, and the nature of the original search or investigation. This report summarizes our findings.

² The Case for Civil Asset Forfeiture Reform, Texas Public Policy Foundation:

http://www.texaspolicy.com/press_release/detail/tppf-releases-paper-on-civil-asset-forfeiture-reform. Policing for Profit, 2nd Edition, Institute for Justice: <http://ij.org/report/policing-for-profit/>

³ A total of 14 cases involved the seizure of a vehicle. Of those 11 closed during the study period. In one of the 11 closed cases, the state seized the car without using civil asset forfeiture. Of the remaining ten car seizures that closed, two resulted in the return of the car to its original owner.

⁴ State of Texas v \$XXXX U.S. Currency, 427th Judicial District of Travis County, Texas, Original Notice of Seizure and Intended Forfeiture Pursuant to Texas Code of Crim. Proc. Chapter 59, Date withheld to protect Mr. T's privacy.

⁵ *ibid*

⁶ Texas Code Criminal Procedure, Chapter 59, Sec. 59.04. "(a) If a peace officer seizes property under this chapter, the attorney representing the state shall commence proceedings under this section not later than the 30th day after the date of the seizure. (b) A forfeiture proceeding commences under this chapter when the attorney representing the state files a notice of the seizure and intended forfeiture in the name of the state with the clerk of the district court in the county in which the seizure is made."

⁷ State of Texas v. "Mr. T", Grand jury order of no-bill, Date withheld to protect Mr. T's privacy.

⁸ State of Texas v \$XXXX U.S. Currency, Plaintiff's Motion for Non-Suit and Order on Non-Suit granting release of money to Joe T, March 2016.

⁹ <http://www.politifact.com/truth-o-meter/statements/2015/aug/07/rand-paul/rand-paul-says-fourth-amendment-was-what-we-fought/>

¹⁰ <http://www.newyorker.com/magazine/2013/08/12/taken> "Forfeiture in its modern form began with federal statutes enacted in the nineteen-seventies and aimed not at waitresses and janitors but at organized-crime bosses and drug lords. Law-enforcement officers were empowered to seize money and goods tied to the production of illegal drugs. Later amendments allowed the seizure of anything thought to have been purchased with tainted funds, whether or not it was connected to the commission of a crime. Even then, forfeiture remained an infrequent resort until 1984, when Congress passed the Comprehensive Crime Control Act. It established a special fund that turned over proceeds from forfeitures to the law-enforcement agencies responsible for them. Local police who provided federal assistance were rewarded with a large percentage of the proceeds, through a program called Equitable Sharing. Soon states were crafting their own forfeiture laws."

¹¹ <http://www.statutes.legis.state.tx.us/Docs/CR/htm/CR.59.htm>

¹² On the constitutional issues: <http://www.forbes.com/2011/06/08/property-civil-forfeiture.html>. On the innocent owners who have been victimized: <http://www.newyorker.com/magazine/2013/08/12/taken>, http://gothamist.com/2014/01/14/nypd_civil_forfeiture.php, <http://www.wsj.com/articles/whats-yours-is-theirs-1409702898>, and specifically on Texas victims: <http://ij.org/case/state-of-texas-v-one-2004-chevrolet-silverado/>, <https://www.texasobserver.org/preying-innocent-civil-forfeiture/>

¹³ State of Texas v. \$18,980 U.S. Currency, where money was taken from a person at the airport. The case was settled with the return of \$14,235 to the owner a week after the forfeiture notice was filed.