

After Cops Seized and Kept Cash, Washington, D.C. Settles Almost Million-Dollar Forfeiture Class Action



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Washington, D.C. paid \$855,000 to settle a class action filed by property owners who argued that the city's policy of seizing and taking their cash violated their constitutional rights. Using a little-known legal procedure known as [civil forfeiture](#), District police seized small amounts of cash—with many seizures around \$100—from approximately 9,000 people. In a [settlement](#) approved by U.S. District Judge Christopher Cooper, \$500,000 was disbursed to pay claims to 1,377 claimants, while nearly \$300,000 was allocated for attorney's fees and expenses. Further abuses of civil forfeiture could be curbed by reforms proposed by both the city council and Congress.

In civil forfeiture cases, owners do not have to be convicted of a crime to have their property taken by the government. Anthony Hardy, a lead plaintiff in the [class action](#), was stopped by police in December 2006, who then allegedly found narcotics in the trunk of his car. Police arrested Hardy, charged him with possession and seized \$127. Three months later, his case was dismissed. But the District of Columbia continued to hold on to his cash. Additionally, the suit alleged that Hardy was never notified about the forfeiture or granted an opportunity to contest it.



A cruiser from the Metropolitan Police Department. (Photo credit: Wikipedia)

Under [D.C. law](#), after receiving a notice that their property has been seized and is subject to forfeiture, owners have 30 days to file a claim to try to get their property back. Meanwhile, the city has [one year](#) to file a civil forfeiture action.

Purportedly, these procedures were not followed with Hardy or the thousands of people he represents as a class. In 2009, the Evidence Control Branch of the Metropolitan Police Department (MPD) sent out 3,000 asset forfeiture notices. But [2,000 of them were returned](#) to the division unsigned. The Branch's manager even testified that they usually did not search for other addresses to mail the returned forfeiture notices.

Arguing that the District's forfeiture policy infringed their Fifth Amendment right to due process, Hardy, along with Donnell Monts, who had \$823 taken after his arrest in 2006, [filed a class action](#) in 2009. Five years later, the two men will each receive \$2,500 as part of the settlement.

Altogether, the nearly 1,400 claimants in the class action lost almost \$700,000 to forfeiture, so the settlement will restore roughly three-quarters of what was taken from them. Yet the claimants represent just 14 percent of those affected by this particular D.C. forfeiture policy. Over a six-year period, the Metropolitan Police Department seized a staggering [\\$2.9 million](#) from these owners collectively.

Among the owners represented in the lawsuit, the median amount of cash seized was a mere \$120. In fact, the MPD seized as little as \$1 from some owners. There is

little indication trivial amounts of money can be plausibly tied to the drug trade, noted Sean Day, who was co-counsel on the class action.

Nor is Washington, D.C. an outlier in using civil forfeiture to seize small sums of cash. Research by the [Institute for Justice](#) challenges the notion, frequently perpetuated by law enforcement, that civil forfeiture is primarily wielded against sprawling criminal enterprises. In Minnesota, the average value of forfeited property was **\$1,250**, while in Georgia half of the property seized by law enforcement in 2011 was worth less than **\$650**. Since the cost to litigate is often worth more than the property that was taken, many owners do not even contest these seizures.

Yet the class-action settlement does not alter the scant safeguards and perverse incentives created by the [District of Columbia's civil forfeiture regime](#). To forfeit property, the District only needs to show probable cause, the same standard used to obtain a warrant. Not only do 36 states have a [higher standard of proof](#) in all civil forfeiture cases, but probable cause is a far cry from requiring "beyond a reasonable doubt," which is needed to convict someone of a crime. After a property is forfeited, law enforcement can keep all of the proceeds.

These lax laws create potent incentives to police for profit. Between 2010 and 2012, Washington, D.C. generated **\$4.8 million** in forfeiture revenue. "It's become a cash cow for a lot of jurisdictions frankly," said Day.

Moreover, the MPD makes liberal use of a federal loophole known as ["equitable sharing."](#) Under this program, local and state law enforcement can collaborate with federal agencies to forfeit property under federal law, thereby bypassing local and state civil forfeiture laws. Local law enforcement can then take a cut of the proceeds from forfeited property. From 2010 to 2012, the Asset Forfeiture Unit of the MPD processed **\$9.2 million** worth of property seized by both joint task forces and the MPD. The MPD kept \$2 million in equitable sharing proceeds.

Meanwhile, property owners have to contend with legal proceedings that can be downright baffling, like having to pay for their right to challenge a seizure in court. This ["penal sum"](#) is 10 percent of what the property is worth (as determined by the MPD) and can range anywhere from \$250 to \$2,500. If owners do not pay, the government automatically wins and keeps the property.

After police seized his car in June 2012, Keith Chung, a firefighter, was told to pay a bond of **\$2,075** before he could challenge the seizure in court. Police never charged

Chung with any crime. After the Public Defender Service for the District of Columbia intervened, [he got his car back](#) .

Moreover, unlike criminal cases, the burden of proof is on the owners—they are assumed guilty unless they prove their innocence. In order to retrieve their property, owners have to show by a “preponderance of the evidence” they have no connection to a crime to prevail, a higher burden of proof than what the D.C. government needs to forfeit property. Since these forfeiture cases are in civil court, owners do not have a right to court-appointed counsel, even if they are indigent.

In the class action that was settled, the attorneys’ hourly rate was just north of [\\$250](#). So an hour of legal help was worth twice as much as the property taken from Hardy and many others. As the case makes clear, many owners simply do not have the means to challenge the government in court.

Nor is the government required to maintain or preserve property it has seized. In a separate, currently-pending forfeiture class action filed against the District, police seized and held onto Takia Jenkins’ car for almost a year. She was never charged with a crime nor was her car involved in any criminal prosecution. When she finally got her car back, the windows were damaged and the car wouldn’t start. Mold had even formed on the inside.

Last year, six members of the D.C. city council [introduced a bill](#) that would have overhauled civil forfeiture in the District. While it did not pass, the council is expected to reconsider forfeiture reform when it reconvenes in the fall. On the federal level, [Rep. Tim Walberg](#) and [Sen. Rand Paul](#) have introduced legislation that would either restrict or outright eliminate participation in equitable sharing, preventing law enforcement from trying to circumvent forfeiture reforms at the local level.

Speaking at a [panel in July on civil forfeiture](#) at the Heritage Foundation, Congressman Walberg described his bill as “common-sense,” as it “does not detract from good law enforcement.” Americans, he added, should live “without the fear of overweening government.”

If you or anyone you know has been a victim of civil forfeiture, please [contact the Institute for Justice](#). For more information on policing for profit, visit [endforfeiture.com](#)

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