

Civil asset forfeiture: Tracking the cash seized by police in a Deep South state where transparency is not required

March 29, 2017

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Each year, law enforcement agencies seize billions of dollars in cash and other property from potential suspects – some of whom are never convicted or even charged with a crime – through a process called civil asset forfeiture.

In nearly every state, the agencies get to keep some or all of the property.

In 13 states and the District of Columbia, agencies don't have to report or even keep records to show the value of the property they confiscate or why it was seized, according to the Institute for Justice.

Alabama is one such state. A research analyst at the Institute recently wrote that Alabama’s civil forfeiture laws are among “the most unjust in the nation.”

In order to gauge the scale of seizures there, the Southern Poverty Law Center reviewed hundreds of cases in which the “defendant” in a civil case was a U.S. dollar amount – as in this example: State of Alabama v. Two Hundred Six (\$206.00) Dollars, U. S. Currency. We found that law enforcement agencies in nine Alabama counties – representing nearly 30 percent of the state’s population – seized more than \$2 million in cash using civil forfeiture procedures in 2016.

Many of the cases in the SPLC’s review are still pending in court, but the data shows that the state rarely loses civil forfeiture cases dealing with cash. In the nine counties – Jefferson, Montgomery, Autauga, Blount, Cherokee, DeKalb, Etowah, Henry and Tuscaloosa – the state won 131 of 141 closed cases. Another 263 cases remain unresolved.

In the closed cases, the courts awarded more than \$313,000 in seized cash to the law enforcement agencies. In the remaining cases, police already seized

the cash, but the cases await a final court ruling to determine whether law enforcement agencies may keep it.

Because of Alabama's lack of a reporting requirement, there is no way to track the value of all property seized beyond cash – vehicles, computers, jewelry, weapons and more – but were it counted, the total value of seized property would almost certainly far exceed the roughly \$2 million in cash seizures identified by the SPLC.

Among the nine counties analyzed, agencies in Jefferson County – the state's most populous – led in the amount seized, with \$1,162,130. They were followed by agencies in Tuscaloosa County, \$611,147; Blount County, \$143,773; Etowah County, \$42,615; Montgomery County, \$36,727; Cherokee County, \$21,208; DeKalb County, \$15,418; Henry County, \$7,227; and Autauga County, \$3,388.

In some of Alabama's 58 other counties – such as Madison, which includes the major city of Huntsville – cases are styled (or named) in such a way that made it impossible to include them in this analysis.

Origins in the drug war

Civil asset forfeiture laws originated and grew during the 1970s and 1980s as a way to fight drug trafficking. They have created a lucrative revenue stream for law enforcement agencies, one that grew from \$94 million in 1986 to \$4.5 billion by 2014, according to the Institute for Justice.

But drug traffickers are hardly the only people targeted. Often, the targets are simply people carrying cash who are stopped and searched by suspicious police.

Many times, the individual cash amounts taken are so low that it isn't worth hiring a lawyer or taking time off work to go to court to get the money back. And sometimes, people are intimidated and unwilling to even ask about getting their money back.

A 25-year-old maintenance worker in Tuscaloosa, who spoke to the SPLC recently on condition of anonymity, lost more than \$200 in a civil asset forfeiture case last year but was never charged with a crime.

Four officers with the West Alabama Narcotics Task Force surrounded him in June 2016 as he drove a golf cart at the apartment complex where he worked. They escorted him back to his apartment. There, officers handcuffed the man and the friends who were staying with him. They searched every room and found a jar of marijuana. They also found the man's cash.

After a while, the officers decided not to arrest or charge anyone. But when they left, they took the cash anyway.

"I just let it go," the man said. "I didn't want to get involved with that again."

Alabama's law

Critics of Alabama's law, including the SPLC, are calling for reform. Along with increasing transparency, legislators should strengthen the protection of individual property rights and ensure due process by, at a minimum, requiring a criminal conviction before asset forfeiture.

"The process right now is unfair, undemocratic, and frankly, un-American," said Emily Early, an SPLC staff attorney. "Most people would likely agree

that it's simply not right for the government to take and keep someone's money, vehicle or other property without having to prove any wrongdoing by the owner whatsoever. Yet the law permits just that.”

Alabama's law allows law enforcement agencies to confiscate cash, vehicles or other property if they reasonably believe the property was either involved in a crime or derived from criminal activity. And unlike in criminal proceedings, where law enforcement must prove beyond a reasonable doubt that defendants are guilty, these agencies get to keep the property itself or 100 percent of the proceeds from its sale after merely proving to a court that the property or its proceeds were – more likely than not – used in, or derived from, criminal activity. Innocent owners who may never be accused of crimes but want to reclaim their property must prove their innocence to the court if they want their property back.

The agencies that confiscate the property aren't required to track their actions or disclose any information related to forfeitures. Unless a court orders it returned, they can spend the money or use the property however they choose.

Critics contend that by creating a profit motive, the forfeiture laws have distorted policing and led some law enforcement agencies to prioritize revenue generation over public safety.

Some states have enacted far more restrictive laws than Alabama. But local law enforcement agencies can sometimes circumvent more stringent requirements by turning money over to the U.S. Justice Department as part of its separate “equitable sharing” program. It allows the federal government to “adopt” seized assets and then return up to 80 percent of the value to the local agency.

Dubious benefits

Advocates of civil asset forfeiture laws say they directly disrupt the drug trade. Indeed, much of the cash seized in the cases reviewed by the SPLC was collected in large chunks – up to \$270,000 in one case. Some of the accompanying charges do deal with drug trafficking.

But sometimes, an accusation of drug trafficking is just that – an accusation with no evidence.

Victor Marquez, a migrant farmworker, knows that all too well.

In May 2008, he was passing through Alabama on Interstate 10 on his way to Mexico after a season of harvesting beans in south Florida. A police officer in Loxley stopped the truck in which Marquez was a passenger for “failure to maintain a marked lane.” The officer seized nearly \$20,000 in cash that Marquez had saved and was planning to use to start building a house on land he had earlier bought.

There was no evidence of drug activity, and Marquez was never charged with a crime.

The SPLC won the return of his money after the state refused to provide documents and information that would show the extent to which officers in the area were using the civil asset forfeiture law.

“Cases like Victor Marquez’s demonstrate the flaws in this law,” Early said.

“No one produced evidence of criminality, yet Mr. Marquez stood to lose his hard-earned savings because of an officer’s mere belief of criminal activity.”



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