



Written by [Steve Byas](#) on April 18, 2016

## Feds Reinstate Asset Forfeiture Program

When William Cicco left his Broken Arrow, Oklahoma, home in March of 2013, he did not realize that carrying a paper bag full of cash would lead to its confiscation by police and the accusation that he was a drug dealer.

Cicco was arrested for driving under the influence — he had taken prescription painkiller medication to treat his cancer. When the police found the \$15,555 in the bag, they assumed it was drug profits and seized it under what is called “civil asset forfeiture”(CAF).



Under CAF, a person does not have to be convicted of any crime before law enforcement can take their property. It is used by both federal government officials and state and local law enforcement officers to seize property that they suspect has been used in wrongdoing — without having to charge a person with wrongdoing.

In the case of criminal asset forfeiture, on the other hand, the accused is afforded all the constitutional and statutory procedural safeguards available under criminal law. With criminal forfeiture, the accused must be found guilty beyond a reasonable doubt before property is forfeited.

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But civil asset forfeiture is an assault upon the very concept of private property and the legal position that an accused person is innocent until found guilty beyond reasonable doubt.

So, when Attorney General Loretta Lynch announced late last year that the Justice Department was ending its federal CAF program, it was considered a major victory for opponents of CAF. But now, less than four months later, the Obama administration has reversed that decision and reinstated the federal “equitable sharing” program, under which federal and state law enforcement work together in seizing cash and other property allegedly used in criminal activity. Any proceeds obtained through the equitable sharing program must be used solely for law enforcement.

By using the “adoptive forfeiture” feature of the law, local and state law enforcement can avoid the higher burden of proof (beyond a reasonable doubt) and various other restrictions some state legislatures have been enacting. Even simple possession of marijuana, a federal crime, can lead to assets being forfeited to the feds.

This creates a situation wherein state governments have lost at least some control over their own law-enforcement agencies. “Power of the purse” has always been a potent tool of legislative bodies to restrict the power of the executive, or law-enforcing, branch of government. Even if state governments require that any seized assets go to the general treasury of the state, or to a state program other than law enforcement, equitable sharing instead puts the state’s share of seized assets in the hands of law enforcement.

By having seized assets go directly into the coffers of those who seize the assets, a perverse incentive is



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thus created for seizures to take place.

The federal CAF program was begun in 1984 as part of President Ronald Reagan's Comprehensive Crime Control Act. While it was intended for use against only major drug traffickers and cartels, it is now commonly used against average Americans.

In the above mentioned case of William Cicco, he was forced to spend \$3,000 on a lawyer and a bond to get his money back. When the Bixby, Oklahoma, police prepared to impound Cicco's automobile, they found empty bottles for two prescription painkillers, and a partially-filled bottle of another medicine — a non-narcotic. All were medicines to treat Cicco's lymphoma.

Then they found the bag of cash.

"My lawyer told me the DA was stonewalling; they didn't want to give the money back," Cicco said. "I knew I wasn't going to get it unless I went through this long court battle ... so I offered [the attorney] two grand to get it."

"Are there instances where the facts bear out where we can't make our case? Yeah," said Tulsa County Assistant District Attorney James Dunn. Despite this, he defended his attempt to keep Cicco's cash, insisting, "You don't throw the baby out with the bath water. Our system is working."

In Cicco's case, he was out attorney fees, bond fees, and car impounding fees, even though he was innocent of drug dealing.

Most prosecutors agree that CAF is a good thing, and defend the notion that assets can be seized without proving someone guilty of anything. Chris Ross, another district attorney in Oklahoma, took this position in an op-ed in *The Oklahoman* newspaper, stating, "The proposal that a conviction be necessary before forfeiture is granted is an ill-conceived notion that ignores the reality of the narcotics trade."

"If a conviction were required to seize and forfeit that money," Ross argued, "then the officer would have no choice but to allow these drivers to continue down the road with the money." He dismissed the cry for "civil asset reform" as the "drug dealer's profit protection."

But Robert Everett Johnson, of the Institute for Justice, offered a different perspective, pointing out that another district attorney in Oklahoma (not Ross) had actually used forfeiture proceeds to pay off his loans, while yet another had lived rent-free for years in a home confiscated through forfeiture.

Writing in the *Oklahoma Constitution* newspaper, Kaye Beach explained the problem:

Over a five-year period law enforcement officials in 12 Oklahoma counties seized more than \$6 million in cash, almost \$4 million of which was taken without any criminal charge. Records indicate that of the \$6.1 million dollars taken, only \$2.1 million was seized from people who were actually charged with a crime, meaning more than 65 percent of the cash seized was taken without any criminal charges being filed.

The harsh reality is that if law enforcement seizes cash, the expense of hiring an attorney and fighting to get the money back is simply not worth it for the suspect — the amount seized is generally less than the expenses of going to trial. Many times, a law-enforcement agency does not even file criminal charges, but simply takes the cash or other property. Tom Fook, an official with the Michigan Association for the Preservation of Property, said he believed that "most" civil forfeitures in his state were little more than "curbside shakedowns," involving seizures of hundreds of dollars, when it would cost thousands of dollars for a suspect to fight to regain the money.



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Any changes to CAF laws are almost always opposed by law-enforcement agencies, which profit so well from the practice. Back in the 1990s, Sheriff Bob Vogel of Volusia County, Florida, summed up the attitude of many at that time, and today, on the question of the guilt of those from whom assets were seized: “We don’t have to prove the fact they [property owners] are guilty.”

As mentioned above, one argument used against any reform of the practice of CAF is that those promoting such reform are favoring drug dealers over law enforcement. The drug problem is so severe, they contend, that law enforcement simply must have the “tools” to combat the drug kingpins. But it is unfair to charge those who wish to rein in the abuses of CAF as favoring criminals, just as it is unfair to charge those who argue for due process for accused murderers as supporting murder.

Certainly, many who are involved in seizing assets which they believe are used in drug dealing or other crimes truly believe they are doing right and are perfectly honest. They see the ravages of drugs on addicts, and feel justified in taking whatever actions are necessary to combat the problem.

However, doing wrong to do right is still wrong. Even in horrific murder, rape, and armed robbery cases, the accused are still afforded the due process of law. One provision of the English Bill of Rights, adopted in the aftermath of the Glorious Revolution in England, was crystal clear: “Forfeitures before conviction are void.”

If one concedes that district attorneys’ offices, sheriffs’ departments, and police departments are underfunded — and in some cases, they no doubt are — that does not justify taking property from American citizens who have not been convicted of any crime. As U.S. Senator Daniel Webster stated in the 19th century, “Good intentions will always be pleaded for every assumption of power.... The Constitution was made to guard the people against the dangers of good intentions.”

The late Congressman Henry Hyde contended that CAF is also a violation of the Eighth Amendment, which prohibits “excessive fines.” He wrote, “There is little or no proportionality between the crimes alleged and the punishment imposed” in most cases, citing examples of entire hotels being taken from the owners simply because gangs used a room for drug transactions, or apartment houses being confiscated because of drug deals allegedly taking place in some of the units. (One would think that this has happened in the vast majority of apartment complexes in the United States.)

And then, of course, if the Constitution is not important to those favoring CAF, there is the Seventh Commandment: “Thou shalt not steal.”

And, as a stunning and egregious example of what would have been one of the costliest CAF seizures at the time (it was later released), in 1988, the \$80 million oceanographic research vessel Atlantis II was seized off the coast of San Diego because of the discovery of marijuana residue and two pipes in the ship’s crew quarters.

While it is up to each state to reform its own CAF laws, Congress can take action to severely cripple the role the federal government plays in this travesty. They can defund the program. This would greatly restrict the “equitable sharing” program, even if the Obama administration desired to continue it.

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