

**Testimony of Kirby Thomas West  
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**Before the United States House Committee on the Judiciary,  
Subcommittee on the Constitution and Limited Government**

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Thank you, Mr. Chairman, and the members of this Committee, for the opportunity to testify today. My name is Kirby Thomas West. I'm an attorney at the Institute for Justice, where I litigate cases dealing with the protection of property rights—including cases challenging civil forfeiture. The Institute for Justice is a national nonprofit public interest law firm. For more than thirty years, we have litigated cases on behalf of individuals and small businesses to defend their constitutional rights.

IJ has been litigating forfeiture cases since the 1990's. We have conducted extensive research on the use of civil forfeiture nationwide. Most notably, we have published three editions—in 2010, 2015, and 2020—of *Policing for Profit*, the only comprehensive study on civil forfeiture laws in all 50 states and at the federal level.<sup>1</sup> We have also published academic studies based on federal government data, which found that civil forfeiture is ineffective at fighting crime but is used to generate more revenue when there are budget shortfalls.

In recent years, we have published multiple studies based on federal government data that found that civil forfeiture is ineffective at fighting crime, but is used to generate more revenue when there are budget shortfalls.<sup>2</sup> In July 2020, we used data obtained through FOIA to publish a groundbreaking report on Department of Homeland Security currency seizures at airports, which found that from 2000-2016, DHS agencies seized more than \$2 billion at airports in more than 30,000 seizures, including more than \$500 million seized for missing paperwork.<sup>3</sup> We have also published a first-of-its-kind study on victims of forfeiture abuse based on a comprehensive survey of forfeiture victims in Philadelphia.<sup>4</sup>

## **INTRODUCTION**

When the government charges you with a crime, you can rely on crucial guarantees provided by the Bill of Rights to ensure that you have a fair opportunity to fully contest the charges brought against you. Those protections also ensure that you will not be punished unless the government can prove its case beyond a reasonable doubt. But when it's your property—your car, your cash, your home—that the government alleges has been involved in wrongdoing, there is a trapdoor from the Bill of Rights. This trapdoor is civil forfeiture.

To describe civil forfeiture is to discredit it. The government can seize and forfeit property that it believes is connected to a crime, regardless of whether it believes the property owner committed—or was even involved in—that crime. And throughout the forfeiture process, the deck is stacked in the government's favor. The property owner has no right to counsel, the government need only establish the property's connection to a crime by a preponderance of the evidence, and innocent property owners must carry the burden to prove their own innocence.

Adding to this dearth of procedural protections, most federal civil forfeitures never make their way to a real court. Instead, the entire process occurs within the agency attempting to forfeit the property in what is known as administrative forfeiture. From 2000-2019, for example, 93% of

the DOJ's civil forfeitures were administrative forfeitures.<sup>5</sup> These administrative forfeitures are extremely complicated to navigate. The process is full of stumbling blocks for property owners, any one of which could cause them to permanently lose their property.

Civil forfeiture is not only unjust—it's ubiquitous. From 2000-2019, federal law-enforcement agencies deposited \$45.7 billion into federal forfeiture funds.<sup>6</sup> And most forfeitures are not huge sums taken from dismantled drug cartels. Rather, they are more frequently modest sums taken from everyday people. Half of all federal currency forfeitures by DOJ agencies from 2016-2019 were less than \$12,090.<sup>7</sup>

The reason that civil forfeiture is so common is simple. Law enforcement gets to keep the money. Federal law enforcement retains 100% of the proceeds of civil forfeitures. And state law enforcement can still get up to 80% of forfeiture proceeds as long as they "partner" with the federal government in a process known as equitable sharing.

Civil forfeiture is inherently unjust and rife with opportunities for potential abuse. But the fact is, civil forfeiture also simply doesn't work. Studies have shown that civil forfeiture has no meaningful impact on crime rates or drug use, and may even reduce crime closure rates by diverting law enforcement time and resources.

The federal government itself has recognized civil forfeiture's grave deficiencies. In recent years, the Inspectors General of both the Department of Justice and the Department of Homeland Security have published numerous reports detailing the very weak procedural protections for property owners in civil forfeiture cases and the accompanying high risk of civil liberties violations to which they lead.<sup>8</sup>

And yet the vast majority of forfeitures done under federal law are civil in nature. From 2000 to 2019, 84% of all forfeitures done by DOJ agencies were civil forfeitures, while 98% of forfeitures done by Treasury agencies were civil forfeitures.<sup>9</sup> That is because it is much easier for the federal government to prevail in a civil forfeiture case, where there is a much lower burden of proof and the property owner does not receive the same protections afforded to a criminal defendant.

## OVERVIEW

### **Billions of dollars are forfeited every year from tens of thousands of seizures.**

- From 2000-2019, IJ has documented **at least \$69 billion seized and forfeited** at all levels of government. This is a very conservative estimate that substantially undercounts the actual total, because many states were not reporting their forfeiture statistics for much of this time period (and some still do not).<sup>10</sup>
- Of that total, at least **\$45.7 billion** was deposited into dedicated federal forfeiture funds by federal law-enforcement agencies.<sup>11</sup>
- Every year, the federal equitable sharing program pays out hundreds of millions of dollars to state and local law enforcement agencies—**nearly \$9 billion** from 2000 to 2019.<sup>12</sup>
- From 2000 to 2016, DHS agencies seized over **\$2 billion** at airports in over 30,000 seizures, with more than **\$500 million** coming from seizures over failure to file

paperwork declaring that the traveler was traveling with more than \$10,000. These seizures are almost never accompanied by any arrest.<sup>13</sup>

### **Civil forfeiture regularly upends the lives of innocent people.**

The risk of innocent property owners getting caught in the civil forfeiture machine is not hypothetical, it's a routine occurrence. In its decades of experience litigating civil forfeiture cases, IJ has represented dozens and dozens of innocent people who have lost cars, cash, and even homes, through no fault of their own. We have also represented many small business owners under threat of losing their livelihood to civil forfeiture—particularly those in industries that tend to operate in cash, like restaurants, grocery stores, and convenience stores. And we have heard from many, many more people than we could feasibly take on as clients who have called our office to report their own civil forfeiture horror stories. A small sample of our civil forfeiture cases reveals the varied ways innocent people can lose their property through civil forfeiture. Most of the stories listed below have happy endings—at least insofar as the property taken was eventually returned to the property owner because IJ represented them *pro bono*. But innocent people shouldn't have to retain a team of lawyers to pursue their case for months or years to ensure they won't have their property taken by the government.

- **Stephen Lara<sup>14</sup>** is a Marine Corps veteran who served tours in Iraq and Afghanistan. In 2021, he was driving through Nevada on his way to visit his daughters when he was stopped by the Nevada Highway Patrol. Stephen keeps his life savings in cash, and regularly traveled with it when he would take weekend trips to spend time with his daughters. When asked, he truthfully told the officers who stopped him that he had his life savings in the trunk of his car, along with bank receipts documenting his withdrawals. The officers had no reason to think that Stephen had done anything wrong, but they nevertheless took his money—nearly \$87,000. Law enforcement never charged Stephen with any crime, but the Nevada Highway Patrol nevertheless turned the cash over to the DEA for civil forfeiture.
- **Linda Martin and Reggie Wilder<sup>15</sup>** are a California couple who had been saving money to purchase a new home when it was taken for civil forfeiture by the FBI. Linda and Reggie stored their \$40,000 in savings in a safe deposit at a business called US Private Vaults. The FBI raided the business and seized the property from *all* the safe deposit boxes—including Linda and Reggie's. The FBI never told property owners precisely what crime their property was alleged to have been involved in, it just plowed ahead with the civil forfeiture process.
- **Cristal Starling<sup>16</sup>** runs a mobile food cart in Rochester, New York, to provide for herself and her grandnephew. She was saving money to expand her business into a food truck when her dreams came crashing down. In 2020, local police raided her apartment because they believed that her then-boyfriend was dealing drugs. He was later acquitted, but Cristal was still unable to get back the \$8,000 in cash the police had taken from her during the raid. The local police had turned that money over to the DEA for civil forfeiture through the byzantine equitable sharing process.
- **Kermit Warren<sup>17</sup>** is a hardworking grandfather and the head deacon of his church in the Lower Ninth Ward of New Orleans, Louisiana. When Kermit lost his job due to the COVID-19 pandemic, he tried to use his savings to purchase a new tow truck to support himself. He traveled to Ohio with \$30,000 cash intending to buy a truck, but it didn't fit

his needs and he went to the airport to return to Louisiana. DEA officers took the \$30,000 at the airport and initiated forfeiture proceedings, even though Kermit was never charged with any crime.

- **Anthonia Nwaorie**<sup>18</sup> is a registered nurse from Katy, Texas who—like Kermit—had cash seized at an airport. Anthonia was stopped at Houston’s George Bush Intercontinental Airport when she was about to board an international flight back to her home country of Nigeria. Anthonia was traveling with over \$40,000 that she intended to use to start a medical clinic for women and children with limited access to health care in her home village. Not realizing that she was required to report large sums of cash when traveling internationally, Anthonia neglected to fill out the required form. As a result, CBP took all her cash.
- **Gerardo Serrano**<sup>19</sup> is a Kentuckian who was traveling to visit his relatives in Mexico when he was stopped by U.S. border patrol agents at the border crossing in Eagle Pass, Texas. The agents searched Gerardo’s vehicle and found five .380-caliber bullets in his Ford F-250. Though Gerardo was not traveling with his legal handgun, just the five bullets, CBP attempted to permanently take the truck through civil forfeiture because it had been used to transport “munitions of war.”
- **Russ Caswell**<sup>20</sup> and his family owned a small motel in Tewksbury, Massachusetts. Over a period of 14 years, and 200,000 rooms rented, there were fifteen arrests at the motel—throughout each of which Russ and his business cooperated with law enforcement, and at least one of which was a sting operation in which Russ let local police use a room for free. Nevertheless, the local police department, working with the DOJ, relied on these arrests to take Russ’s motel through civil forfeiture.

### **The evidence indicates civil forfeiture is ineffective at fighting crime.**

The most common public defense of civil forfeiture is the vague claim that it helps crimefighting, but the evidence is to the contrary. The Department of Justice’s own Inspector General has found, for instance, that the agency does not even track how forfeitures might be linked to criminal prosecutions.<sup>21</sup> And a detailed report by Professor Brian D. Kelly statistically analyzed a decade of data from the federal equitable sharing program against federal data on local crime, drug use and economic indicators. Professor Kelly’s results showed that forfeiture has no meaningful effect on crime rates or drug use, but rather that forfeiture activity increased when local economies suffer, indicating that departments use civil forfeiture to raise revenue.<sup>22</sup>

At the state level, recent research demonstrates the ineffectiveness of civil forfeiture as a crime fighting tool. When New Mexico abolished civil forfeiture in 2015, proponents claimed it would result in more crime. But the data show that crime rates did not increase and arrest rates did not drop following New Mexico’s reforms.<sup>23</sup> In addition, in 2021, IJ published Professor Kelly’s first-ever multistate study of the impact of civil forfeiture and found that there is no data supporting the argument that its use decreases crime, and ample evidence that its primary purpose is to generate revenue.<sup>24</sup>

The fact that civil forfeitures are very often relatively low value also belies any claim that civil forfeiture is primarily used as a tool to take down drug kingpins. The median federal currency forfeiture by DOJ agencies from 2016-2019, was \$12,090, meaning that half of all currency forfeitures were less than that.<sup>25</sup> The median federal currency forfeiture by Treasury agencies

from 2015-2016 was even smaller: \$7,320.<sup>26</sup> At the state level, the median currency forfeiture across about 20 states with available data was about \$1,000. In most of those states, the median forfeiture is even smaller—often much smaller. For example, half of Michigan’s currency forfeitures were less than \$423; half of Pennsylvania’s were less than \$369.<sup>27</sup>

**Civil forfeiture violates constitutional principles of federalism and separation of powers.**

*Equitable sharing poses a threat to federalism and undermines state forfeiture reform efforts.*

The federal government’s “equitable sharing” program enables state and local law enforcement to “partner” with federal law enforcement in exchange for a “cut” of up to 80% of forfeiture proceeds. Equitable sharing enables local law enforcement to evade any restrictions their state legislatures have imposed on civil forfeiture—including, for example, higher burdens of proof under state law or requirements sending all forfeiture proceeds to the state treasury, as is the practice in several states. In Missouri, for example, the state constitution requires that all forfeiture funds be directed to schools. But Missouri law enforcement partners with the federal government to evade this constitutional requirement through equitable sharing. And they are extremely effective. A 2019 investigation found that less than 2% of forfeited funds made it to Missouri schools.<sup>28</sup>

*Administrative forfeitures are procedurally deficient and violate the principle of separation of powers.*

Part of the genius of the constitutional system of separation of powers is that it was designed to ensure a person could not lose their life, liberty, or property without the action of each branch of government. Congress must pass a law, the executive branch enforces it, and the judiciary adjudicates individual cases. But administrative forfeitures cut the judiciary out entirely. If someone is going to permanently lose their property, that case should appear in a real court before a real Article III judge.

Administrative forfeiture permits government agencies to decide forfeiture cases themselves without any judicial oversight—not even from an administrative law judge. About 80-95% of all federal forfeitures are finalized through the administrative forfeiture process, where the same agency that seized the property acts as judge and jury.<sup>29</sup>

*Civil forfeiture gives law enforcement—instead of Congress—the power to raise revenues.*

Under current law, federal law enforcement retains 100% of the proceeds of federal forfeitures, giving federal executive departments—and all of their agencies, such as DEA, FBI, CBP, etc.—the power to not just enforce the law, but also to provide for their own funding. And every year, the federal equitable sharing program pays out hundreds of millions of dollars to state and local law enforcement agencies—more than \$8.8 billion from 2000 to 2019.<sup>30</sup> Funneling forfeiture proceeds to law enforcement creates a perverse financial incentive for agencies to use forfeitures to pad budgets. But the Constitution vests Congress, not the executive branch, with the power to raise revenues.

## **The federal forfeiture system is incredibly complex and stacks the deck against property owners.**

The federal forfeiture system involves a labyrinthine set of procedures that is nearly impossible for a layman to navigate. Combined with the low median value of a forfeiture (and the comparatively high cost to hire an attorney to contest a forfeiture), this leads to very high rates of defaults in forfeiture cases.

With administrative forfeiture, the government need not file a complaint against property in court. Instead, agencies just send a notice to owners. If property owners fail to respond within about 30 days, their property is forfeited automatically.

If a property owner files a petition—like Linda Martin did—their case goes into the administrative forfeiture system. But even when owners do file a petition, agencies often still forfeit property administratively. Administrative forfeitures are typically decided by the agency’s office of forfeiture counsel, whose very job is to forfeit people’s property. This is like having the head coach for the opposing team serve as referee, and just as unfair. The agency has total discretion to resolve the case as it sees fit and is held to no legal standard. Unsurprisingly, very few property owners end up getting their property back through this unbalanced process.

In addition, property owners frequently fail to understand that by submitting an administrative petition to the seizing agency, instead of a claim seeking judicial proceedings, they may not be able to appeal the agency’s decision in court. Of federal law-enforcement agencies that seize and forfeit property, only Customs and Border Protection (CBP) permits property owners a second chance to file a claim and take their case to court if they don’t like the outcome of the administrative proceedings. Property owners whose property was seized by DOJ agencies such as DEA or FBI get no such opportunity to “appeal” the agency’s decision.

If property owners instead want to go to court and have their case heard by a judge, they can file a claim seeking judicial proceedings. But federal law and some states let the seizing agency—which stands to benefit financially from forfeitures—decide whether an owner submitted his or her claim in just the right way. Unsurprisingly, DOJ data indicate that between 1997 and 2015, one-fifth of all claims filed for seized property—and more than one-third of claims filed for seized cash—were deemed deficient by the seizing agency.<sup>31</sup> The data suggest federal agencies reject claims largely for technical reasons, most commonly (68%) because they were not “executed and sworn to by the claimant.”<sup>32</sup>

Some agencies also try to pressure property owners to settle even after they’ve filed a valid claim, which is supposed to be the paperwork depriving the agency of jurisdiction. According to a 2020 DHS Office of Inspector General report, U.S. Customs and Border Protection routinely refrained from sending claims to the U.S. Attorney’s Office (USAO) while it pressured property owners into settling. The OIG concluded: “By negotiating settlements in cases where a USAO declines the case referral or in cases that were not referred to a USAO, CBP may be taking a portion of property from innocent property owners.”<sup>33</sup>

We have developed an infographic, which is being distributed with my testimony, that demonstrates the incredible complexity of the federal forfeiture system, particularly the administrative forfeiture process.<sup>34</sup> As the graphic shows, there are many ways to lose a civil forfeiture case, but very few ways to win. The deck is stacked against property owners.

## SOLUTIONS

There are steps that Congress can, and should, take to reform the broken forfeiture system.

**First, Congress should eliminate the profit incentive that drives most civil forfeiture by diverting all forfeiture proceeds to the general fund.**

Currently, all forfeiture proceeds seized by federal agencies are deposited into one of two funds, the Department of Justice's Assets Forfeiture Fund (AFF) or the Department of Treasury's Treasury Forfeiture Fund (TFF). Both the AFF and TFF are controlled by their respective agencies and can only be spent on law-enforcement purposes. Because expenditures are not approved through the normal appropriations process, there is very little oversight of these funds and how money is spent.

This financial incentive is the engine that drives the billions of dollars in forfeitures each year and leads to the abuses that frequent the front pages of the nation's top newspapers. And by allowing agencies to self-fund outside the normal appropriations process and with little oversight, this profit incentive undermines legislatures' power of the purse and invites questionable expenditures, such as \$70,000 for a muscle car in Georgia, \$250,000 for lavish travel and meals in New York, and \$300,000 for an armored vehicle in Iowa.<sup>35</sup>

**Second, Congress should abolish the federal "equitable sharing" program, which drives so much abuse at the state and local level.**

The federal government has no business running a program that is designed to help state and local police evade state laws. The equitable sharing program should be abolished to preserve federalism and let states implement greater protections for property rights than are available under federal forfeiture law.

**Third, Congress should eliminate the byzantine administrative forfeiture process that makes it extremely difficult for property owners to contest the forfeiture.**

The tremendous complexity of the administrative forfeiture process hamstring owners and permits agencies, in the vast majority of cases, to order the forfeiture themselves without any judicial oversight. Property owners trapped in this system are generally unable to appeal the agency decision to the courts, leaving them entirely at the mercy of the very agency that seized their property and that stands to profit from the forfeiture.

American citizens and property owners deserve their day in court—a real court with a neutral Article III judge. They should not lose their property because the office of forfeiture counsel for the seizing agency makes a self-serving determination that the agency was right to seize and forfeit their property.

**Finally, Congress should address the procedural deficiencies that violate owners' rights to due process.**

The problems with civil forfeiture begin with the financial incentive, but they do not end there. In the federal system, any innocent person whose property is unjustly seized through this system faces a profoundly difficult, time-consuming, and often prohibitively expensive process to get it back, one in which the property is presumed guilty, the innocent owner has no right to

legal representation, and the government has no obligation to meet criminal standards of proof. These procedural deficiencies, all of which favor the seizing entity, are contrary to due process and make civil forfeiture inherently abusive.

One major deficiency with current forfeiture procedures is that owners whose property is seized have no opportunity to promptly contest that seizure. Under federal law, there is no prompt post-seizure hearing to determine who gets to possess the property in the interim while the forfeiture case is being litigated. For owners of seized vehicles—who often need their vehicle to get to work, take children to school, and run errands—that typically means having to purchase or lease an additional vehicle while awaiting the outcome of forfeiture proceedings that may take years to resolve. Even if those owners ultimately prevail, that delay and cost imposes a tremendous burden on people who have not been adjudged guilty of a crime, and are often not even charged with any crime.

The best way to correct these procedural deficiencies is to eliminate civil forfeiture altogether and replace it with criminal forfeiture. No one should be able to enjoy the fruits of their crime, and so the federal government should rightly forfeit the proceeds and instrumentalities of illegal activity *after the property owner has been convicted of a crime*.

But each of the reforms outlined above would go a long way to improving the status quo. And these reforms are all included in the FAIR Act, a bill with a wide coalition of advocates outside Congress and strong bipartisan support within Congress.

It is important to note what the FAIR Act does *not* do. Law enforcement can continue seizing property based on probable cause; the reforms only address what happens when the government seeks to *keep* the property through civil forfeiture. And state and local law enforcement can continue to use their own state-level civil asset forfeiture laws. Finally, the FAIR Act does not touch criminal asset forfeiture—forfeitures made after a defendant is convicted of a crime relating to the use of the seized property.

I urge Congress to pass the FAIR Act, taking advantage of an opportunity to work together to address a serious longstanding injustice.

## CONCLUSION

Until Congress acts, innocent people will continue to lose their money and their livelihoods to civil forfeiture. And the innocent and guilty alike will be subjected to quasi-criminal proceedings that fail to adequately guard their constitutional rights. Congress should act to ensure that, when it comes to the Bill of Rights, there are no workarounds.

Thank you for the opportunity to testify.

*Kirby Thomas West is an Attorney at the Institute for Justice, where she litigates cutting-edge constitutional cases in federal and state court that defend educational choice, free speech, and private property rights.*



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<sup>1</sup> For the most recent (2020) edition of *Policing for Profit*, see <https://ij.org/report/policing-for-profit-3/>.

<sup>2</sup> See Prof. Brian D. Kelly, *Fighting Crime or Raising Revenue?: Testing Opposing Views of Forfeiture*, <https://ij.org/report/fighting-crime-or-raising-revenue/> (June 2019) (reviewing and cross-indexing a decade of data from the federal equitable sharing program with federal data on local crime, drug use, and economic factors to conclude that forfeiture has no meaningful effect on crime fighting, but forfeiture activity does increase when local economies suffer as a means of replacing lost revenue); Brian D. Kelly, *Does Forfeiture Work?: Evidence From the States*, <https://ij.org/report/does-forfeiture-work/> (Feb. 2021) (reviewing data from five states that use forfeiture extensively—Arizona, Hawaii, Iowa, Michigan and Minnesota—to find forfeiture doesn’t work to fight crime but is used to raise revenue); see also *Policing for Profit*, (2020), “New Research: Eliminating Civil Forfeiture Does Not Increase Crime,” <https://ij.org/report/policing-for-profit-3/pfp3content/civil-forfeiture-laws-fail-to-protect-property-owners/new-research-eliminating-civil-forfeiture-does-not-increase-crime/> (studying crime rates before and after New Mexico’s abolition of civil forfeiture on July 1, 2015 in comparison with crime rates in neighboring Colorado and Texas and finding no increase in crime after civil forfeiture was eliminated).

<sup>3</sup> *Jetway Robbery: Homeland Security and Cash Seizures at Airports*, (July 2020) <https://ij.org/report/jetway-robbery/>.

<sup>4</sup> *Frustrating, Corrupt, Unfair: Civil Forfeiture in the Words of Its Victims*, (Oct. 2021) <https://ij.org/report/frustrating-corrupt-unfair/>.

<sup>5</sup> *Policing for Profit*, “Federal Forfeitures by Type,” <https://ij.org/report/policing-for-profit-3/pfp3content/forfeiture-is-hard-for-owners-easy-for-the-government/easiest-forfeiture-procedures-predominate/owners-rarely-fight-back/>.

<sup>6</sup> *Policing for Profit*, “The Federal Government,” <https://ij.org/report/policing-for-profit-3/?state=feds>.

<sup>7</sup> *Policing for Profit*, “The Federal Government,” <https://ij.org/report/policing-for-profit-3/?state=feds>.

<sup>8</sup> See generally DHS Office of Inspector General (“OIG”), *DHS inconsistently implemented administrative forfeiture authorities under CAFRA*, (Aug. 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-09/OIG-20-66-Aug20.pdf>; DOJ OIG, *Review of the Department’s Oversight of Cash Seizure Case and Forfeiture Activities*, (Mar. 2017), <https://www.oversight.gov/sites/default/files/oig-reports/e1702.pdf>; DOJ OIG, *Audit of the Drug Enforcement Administration’s Management and Oversight of Its Confidential Source Program*, (Sept. 2016), <https://oig.justice.gov/reports/2016/a1633.pdf>; DOJ OIG, *Investigative Summary of Findings Concerning the DEA’s Use of a TSA Airport Security Screener as a Paid Confidential Source*, (Jan. 2016), <https://www.oversight.gov/sites/default/files/oig-reports/fl60107b.pdf>; DOJ OIG, *Review of the Drug Enforcement Administration’s Use of Cold Consent Encounters at Mass Transportation Facilities*, (Jan. 2015), <https://www.oversight.gov/sites/default/files/oig-reports/e153.pdf>.

<sup>9</sup> *Policing for Profit*, “Federal Forfeitures by Type,” <https://ij.org/report/policing-for-profit-3/pfp3content/forfeiture-is-hard-for-owners-easy-for-the-government/easiest-forfeiture-procedures-predominate/owners-rarely-fight-back/>.

<sup>10</sup> *Policing for Profit*, “Executive Summary,” <https://ij.org/report/policing-for-profit-3/>.

<sup>11</sup> *Policing for Profit*, “The Federal Government,” <https://ij.org/report/policing-for-profit-3/?state=feds>.

<sup>12</sup> *Policing for Profit*, “Trends in Equitable Sharing Revenues and Payments,” <https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-creates-a-giant->

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[loophole/trends-in-equitable-sharing-revenues-and-payments/](#).

<sup>13</sup> See *Jetway Robbery*, <https://ij.org/report/jetway-robbery/>.

<sup>14</sup> See *Nevada Civil Forfeiture*, <https://ij.org/case/nevada-civil-forfeiture/>.

<sup>15</sup> See *US Private Vaults Administrative Forfeiture*, <https://ij.org/case/us-private-vaults-administrative-forfeiture/>.

<sup>16</sup> See *New York Forfeiture Appeal*, <https://ij.org/case/new-york-forfeiture-appeal/>.

<sup>17</sup> See *Kermit Warren Forfeiture*, <https://ij.org/case/kermit-warren-forfeiture/>.

<sup>18</sup> See *Houston Forfeiture*, <https://ij.org/case/houston-forfeiture/>.

<sup>19</sup> See *Eagle Pass Forfeiture*, <https://ij.org/case/eagle-pass-civil-forfeiture/>.

<sup>20</sup> See *Massachusetts Civil Forfeiture*, <https://ij.org/case/massachusetts-civil-forfeiture/>.

<sup>21</sup> DOJ OIG, *Review of the Department's Oversight of Cash Seizure Case and Forfeiture Activities* (Mar. 2017), at p. 16, <https://www.oversight.gov/sites/default/files/oig-reports/e1702.pdf>.

<sup>22</sup> See Prof. Brian D. Kelly, *Fighting Crime or Raising Revenue?: Testing Opposing Views of Forfeiture*, <https://ij.org/report/fighting-crime-or-raising-revenue/> (June 2019).

<sup>23</sup> See *Policing for Profit*, "New Research: Eliminating Civil Forfeiture Does Not Increase Crime," <https://ij.org/report/policing-for-profit-3/pfp3content/civil-forfeiture-laws-fail-to-protect-property-owners/new-research-eliminating-civil-forfeiture-does-not-increase-crime/>.

<sup>24</sup> See Prof. Brian D. Kelly, *Does Forfeiture Work?: Evidence From the States*, <https://ij.org/report/does-forfeiture-work/> (Feb. 2021).

<sup>25</sup> *Policing for Profit*, "The Federal Government," <https://ij.org/report/policing-for-profit-3/?state=feds>.

<sup>26</sup> *Id.*

<sup>27</sup> *Policing for Profit*, "Big-Time Criminals or Small-Time Forfeitures?," <https://ij.org/report/policing-for-profit-3/pfp3content/forfeiture-is-lucrative-for-governments-nationwide/big-time-criminals-or-small-time-forfeitures/>.

<sup>28</sup> *Policing for Profit*, "Equitable Sharing Creates a Giant Loophole," <https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-creates-a-giant-loophole/>.

<sup>29</sup> *Policing for Profit*, "Federal Forfeitures by Type," <https://ij.org/report/policing-for-profit-3/pfp3content/forfeiture-is-hard-for-owners-easy-for-the-government/easiest-forfeiture-procedures-predominate/owners-rarely-fight-back/>.

<sup>30</sup> *Policing for Profit*, "Trends in Equitable Sharing Revenues and Payments," <https://ij.org/report/policing-for-profit-3/pfp3content/equitable-sharing-creates-a-giant-loophole/trends-in-equitable-sharing-revenues-and-payments/>.

<sup>31</sup> *Policing for Profit*, "Easiest Forfeiture Procedures Predominate," <https://ij.org/report/policing-for-profit-3/pfp3content/forfeiture-is-hard-for-owners-easy-for-the-government/easiest-forfeiture-procedures-predominate/>.

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<sup>32</sup> *Id.*

<sup>33</sup> See DHS OIG, *DHS inconsistently implemented administrative forfeiture authorities under CAFRA*, (Aug. 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-09/OIG-20-66-Aug20.pdf>.

<sup>34</sup> It is available at [www.endforfeiture.com/federalforfeitureprocess](http://www.endforfeiture.com/federalforfeitureprocess).

<sup>35</sup> *Policing for Profit*, “Introduction,” <https://ij.org/report/policing-for-profit-3/pfp3content/introduction/>.

# POLICING — for — PROFIT

**The Abuse of Civil Asset Forfeiture**

3rd Edition

By Lisa Knepper,  
Jennifer McDonald,  
Kathy Sanchez and  
Elyse Smith Pohl

**December 2020**

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**The Abuse of Civil Asset Forfeiture**  
3rd Edition

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 **INSTITUTE**  
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Customs and Border Protection seized over \$40,000 from Anthonia Nwaorie as she was boarding a flight to Nigeria. Her “crime”? Not realizing she needed to file a form.

# Executive Summary

Most states and the federal government have laws allowing police and prosecutors to seize and permanently keep Americans' cash, cars, homes and other property suspected of being involved in a crime—without regard to the owners' guilt or innocence. This is civil forfeiture, and it is rampant nationwide, with local, state and federal agencies using it to collectively forfeit billions of dollars each year. Many of these billions go directly to law enforcement, including the same police and prosecutors who seize and forfeit property.

This third edition of *Policing for Profit* presents the largest collection of state and federal forfeiture data yet assembled and provides updated grades of state and federal civil forfeiture laws. Key findings include:

## Forfeiture Is Big and It Happens Nationwide

Many jurisdictions fail to provide a full accounting of forfeiture activity, so any estimate of forfeiture's scope will undercount. Still, by any measure, forfeiture activity is extensive nationwide, sending billions of dollars to government coffers.

- In 2018 alone, 42 states, the District of Columbia, and the U.S. departments of Justice and the Treasury forfeited over \$3 billion. This is the year for which we have data from the largest number of states.
- Looking at a longer time period, 2002 to 2018, 20 states and the federal government forfeited over \$63 billion. The remaining states did not provide data for those 17 years.
- Since 2000, states and the federal government forfeited a combined total of at least \$68.8 billion. And because not all states provided full data, this figure drastically underestimates forfeiture's true scope.
- Among the states with 2018 data, Florida, Texas, Illinois, California and New York took in the most forfeiture revenue. But once state populations are factored in, Florida, Illinois, Tennessee, Rhode Island and Nebraska used forfeiture most extensively.

## State and Federal Laws Make Forfeiture Easy and Profitable for Law Enforcement

This report grades state and federal laws on three core elements: (1) the standard of proof the government

must meet to forfeit property, (2) protections provided to innocent owners whose property is seized, and (3) the share of forfeiture proceeds that flows to law enforcement coffers, providing a financial incentive to seize and forfeit. These elements reflect both how easy forfeiture is for the government—and conversely, how hard it is for property owners to fight—and how profitable forfeiture is for law enforcement.

- Thirty-five states earn overall grades of D+ or worse for extending property owners meager protections and giving law enforcement large financial stakes in forfeiture proceeds. And federal civil forfeiture laws are among the nation's worst, earning a D-.
- New Mexico earns the nation's only A for abolishing civil forfeiture and eliminating any financial incentive by directing forfeiture proceeds to the state's general fund.
- Since the previous edition of *Policing for Profit*, 32 states and the federal government have adopted some form of forfeiture reform. Unfortunately, few of these reforms have tackled the central problems with civil forfeiture laws graded by this report.

## New Research Shows Eliminating Civil Forfeiture Does Not Increase Crime

This edition of *Policing for Profit* presents new research indicating that states can adopt stronger forfeiture reforms without compromising public safety. The study examines New Mexico's best-in-the-nation forfeiture laws, adopted in 2015. To see whether abolishing civil forfeiture negatively impacted public safety, the study compares New Mexico's crime rates to those of neighboring Colorado and Texas before and after reform.

- Contrary to claims that abolishing civil forfeiture would increase crime rates, multiple analyses across five different measures of crime find no evidence of any negative effect from New Mexico's reform.
- The state's overall crime rate did not rise following the reform, nor did arrest rates drop, strongly suggesting civil forfeiture is not an essential crime-fighting tool and law enforcement agencies can fulfill their mission without it.

## *Federal Equitable Sharing Creates a Giant Loophole*

Even in states with better civil forfeiture laws, innocent people can still lose property to forfeiture. That is because the federal government offers a giant loophole: federal equitable sharing. Equitable sharing allows state and local law enforcement agencies to partner with federal agencies to seize and forfeit property under the federal government's permissive laws and receive up to 80% of the proceeds, regardless of state law. By handing over seized property to the federal government, state and local law enforcement agencies can harness the litigation power of the federal government—and circumvent state laws that provide better protection to property owners or direct forfeiture proceeds to a neutral account.

- Each year, the federal government pays out hundreds of millions of dollars to state and local agencies participating in the equitable sharing program—\$333.8 million in 2019 alone and more than \$8.8 billion in total from 2000 to 2019.
- In a nationwide ranking that factors in drug arrest rates, Rhode Island, New York, California, Massachusetts and Texas participate most heavily in equitable sharing.
- Several states, including New Mexico, have shrunk the equitable sharing loophole in various ways. But in most states, it remains wide open.

## *Easier Forfeiture Procedures Predominate*

With civil forfeiture, property is on trial—not a person—meaning the government need only demonstrate property's link to a crime, not its owner's personal culpability in that crime. This is in contrast to criminal forfeiture, which requires prosecutors to prove *both* the owner's guilt beyond a reasonable doubt—a far more difficult proposition—and the property's connection to the crime. And at the federal level and in more than a dozen states, there is a third option: administrative forfeiture. A form of civil forfeiture, administrative forfeiture allows an agency to forfeit property almost automatically without meaningful judicial involvement.

- Civil forfeiture greatly outpaces criminal at the federal level and in the three states that track this information.
- At the federal level, the vast majority of forfeitures are processed administratively. And in Minnesota, the only state that reliably tracks this information, prosecutors initiate over three-quarters of cases administratively.

## *Forfeiture Isn't Targeting Kingpins and Ordinary People Can't Fight Back*

Proponents argue forfeiture fights crime by hitting criminals where it hurts—in their wallets. Our data cast doubt on this claim, suggesting forfeiture instead often targets ordinary people. The data also show people rarely fight back.

- The median currency forfeiture is small, averaging just \$1,276 across 21 states with available data. In some states, the median forfeiture is only a few hundred dollars. These low values suggest forfeiture often is not targeting kingpins or major financial fraudsters.
- More than that, it may not make economic sense for people to contest such low-dollar forfeitures. Conservatively, hiring an attorney to fight a relatively simple state forfeiture case costs at least \$3,000—more than double the national median currency forfeiture.
- This may help explain why available data suggest forfeitures are frequently uncontested, resulting in nearly automatic wins for the government. In the four states that track this information, people seek return of their property in 22% of cases or fewer.

## *Evidence Suggests Forfeiture Doesn't Work*

Our data also call into question claims that forfeiture fights crime and the proceeds can be used to compensate victims or invest in anti-drug and other community programs.


- Few, if any, forfeiture programs track whether forfeiture cases are linked to, let alone advancing, criminal investigations. As multiple federal inspectors general reports have noted, this makes it impossible for officials to evaluate program effectiveness and calls into question whether forfeiture efforts are advancing legitimate goals.
- A growing body of research, including the new evidence from New Mexico presented here, finds little evidence forfeiture reduces crime.
- Although federal agencies highlight the billions they have recovered and returned to victims of Bernie Madoff's Ponzi scheme through forfeiture, such examples are outliers. Overall, DOJ spends less than a third of forfeiture proceeds on victim restitution or other third-party compensation.
- While some states mandate spending on victim compensation or community programs, data from 13 states suggest agencies otherwise rarely use forfeiture proceeds for these purposes. In 2018, agencies in the 13 states spent almost no proceeds on victims and just 9% on community programs on average.

This report's findings add to a growing body of research casting doubt on forfeiture's utility as a law enforcement tool. They also illustrate the pressing need for forfeiture reform. To protect Americans from losing property unjustly, states and the federal government should follow New Mexico's example and end the inherently abusive practice of civil forfeiture, where owners' personal criminal culpability is generally irrelevant to the proceedings.

States and the federal government should also direct all forfeiture proceeds—including those from criminal forfeitures—to neutral funds, beyond law enforcement control, thereby ending agencies' self-funding and eliminating their incentive to police for profit.

And to prevent agencies from circumventing their state's forfeiture laws, the federal government should abolish equitable sharing. Until it does, states should prohibit agencies from participating in the program.

As this report's findings and New Mexico's experience show, states and the federal government can do all this without sacrificing public safety. It is past time other states and the federal government followed New Mexico's lead on forfeiture—there is nothing to lose and much to gain.

A photograph of a man standing in front of a silver pickup truck. The man is wearing a striped short-sleeved shirt and jeans, and is smiling while pointing towards the camera. The truck is a silver Ford F-150 FX4. In the background, there is a parking lot with other vehicles and a building with signs that read "EL Dorado Flea Market" and "RESTAURANT BAR EL RESTAURANTE DE PAPA".

Customs and Border Protection seized and attempted to forfeit Gerardo Serrano's truck, claiming he used it to transport "munitions of war." The agency was referring to five bullets he forgot were in his center console.

Detroit police have seized two cars from Stephanie Wilson, even though she has not done anything wrong.

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
PEOPLE OF THE STATE OF MICHIGAN, EX REL.  
KYM L. WORTHY, WAYNE COUNTY PROSECUTING ATTORNEY,  
Plaintiff, Case No. 19-014196-CF  
Judge David J. Allen

ONE 2006 SATURN ION, VIN: 1G8AJ55F62101751;  
Defendant Property,  
and  
STEPHANIE GRACE WILSON  
Claimant,

SINAH HAMDAN (P88462) BARTON W. MORRIS, Jr. (P5470)  
Attorney for Plaintiff Attorney for Claimant  
Asst. Prosecuting Atty., Forfeiture Unit The Law Offices of Barton Morris  
Wayne Co. Prosecuting Attorney's Office 528 N. Main St.  
1441 Saint Antoine St., 12<sup>th</sup> Fl. Royal Oak, MI 48067  
Detroit, Michigan 48216 Phone: 248-541-3600  
Phone: 313-224-8529

**PLAINTIFF'S RESPONSE TO CLAIMANT'S MOTION FOR LEAVE TO FILE  
AN ANSWER**

NOW COMES THE PLAINTIFF, the People of the State of Michigan, ex rel.  
KYM L. WORTHY Prosecuting Attorney, ROSEPH JANSEN, Chief of Special  
Operations, CHARLES DAVIS, Principal Attorney Forfeiture Unit, and SINAH  
HAMDAN, Assistant Prosecuting Attorney, Wayne County Prosecutor's Office, and in  
response to the Claimant's Motion for Leave to File an Answer responds as follows:

**FACTS**

On June 24, 2019, an officer of the Wayne County Sheriff's Office was  
conducting street enforcement in the area of Cobb Pl and Northfield St in Detroit, due to

Document received by the MI Wayne Jail Circuit Court.

## Introduction

In 2019, nursing student and single mother Stephanie Wilson had not one, but two cars seized by the Detroit Police Department, losing the first one forever.<sup>1</sup> That same year, the U.S. Drug Enforcement Administration and the Transportation Security Administration seized retiree Terry Rolin's life savings of \$82,373 from his daughter as she passed through Pittsburgh International Airport on her way to open a joint bank account for him.<sup>2</sup> Three years earlier and about 1,000 miles away, a sheriff's deputy in rural Muskogee, Oklahoma, seized more than \$53,000 from Eh Wah, the tour manager for a Burmese Christian musical act, during a routine traffic stop; the funds were concert proceeds and donations intended to support Burmese Christian refugees and Thai orphans.<sup>3</sup> None of these victims were convicted of any crime.

Their stories illustrate a nationwide problem: civil forfeiture. Civil forfeiture allows police to seize property on the mere suspicion that it is involved in criminal activity. Prosecutors can then forfeit, or permanently keep, the property without ever charging its owner with a crime. By contrast, criminal forfeiture requires prosecutors to prove beyond a reasonable doubt that an owner is guilty of a crime and then, in the same proceeding, prove the property is connected to the crime.

As this report demonstrates, the cases of Stephanie Wilson, Terry Rolin and Eh Wah are not isolated incidents: Local, state and federal agencies use civil forfeiture to collectively forfeit billions of dollars each year.

Civil forfeiture laws generally make it easy for governments to forfeit property—and hard for people to fight. As this report documents, these laws typically set low standards of proof, which is the evidentiary burden prosecutors must meet to connect property to a crime. And they provide weak protections for innocent owners whose property is caught up in forfeiture but who have done nothing wrong.

Most forfeiture laws also make seizing and forfeiting people's property lucrative for law enforcement. In most states and under federal law, some or all of the proceeds from forfeiture go to law enforcement coffers. Thus,

Wayne County law enforcement, federal law enforcement and Muskogee County law enforcement stood to benefit financially from forfeiting Stephanie's cars and Terry's and Eh Wah's cash. Giving law enforcement this financial stake in forfeiture can distort priorities, encouraging agencies to pursue financial gain over public safety or justice, cash over crime or contraband.<sup>4</sup> Together, civil forfeiture's ease and financial rewards drive its use nationwide.

Despite the billions generated, our data indicate the typical individual cash forfeiture is relatively small—only a few hundred or a few thousand dollars. This suggests that, aside from a few high-profile cases, forfeiture often does not target drug kingpins or big-time financial

fraudsters. More than that, the data show why it often makes little economic sense for property owners to fight. The cost of hiring an attorney—a

virtual necessity in navigating complex civil forfeiture processes, where there is generally no right to counsel—often outweighs the value of seized property. This is why Stephanie abandoned her first car.<sup>5</sup> Still, many small forfeitures such as hers can make a great deal of economic sense for law enforcement. In just two years, the Wayne County forfeiture program that claimed Stephanie's car generated \$1.2 million in revenue from 2,600 cars.<sup>6</sup>

**Civil forfeiture laws generally make it easy for governments to forfeit property—and hard for people to fight.**

In these and other ways, civil forfeiture threatens not only property rights but also due process rights. Indeed, in 2017, U.S. Supreme Court Justice Clarence Thomas questioned whether modern civil forfeiture laws “can be squared with the Due Process Clause and our Nation’s history.”<sup>77</sup> Civil forfeiture is not only a civil process, it is an “in rem” proceeding, meaning it is a lawsuit against the property, not the person. (Hence, odd case names like *Richardson v. \$20,771.00 U.S. Currency* and *In re: U.S. Currency \$31,780; 2012 Volkswagen Jetta, VIN 3VW3L7AJ0CM366141*.<sup>8</sup>) As a result, Justice Thomas noted, owners can lose property even when innocent, and procedural protections common to criminal proceedings usually do not apply.

Justice Thomas also observed that today’s civil forfeiture laws have expanded far beyond their once-narrow historical purposes—specifically, taking property in piracy and customs cases when the owner was overseas and outside U.S. jurisdiction.<sup>9</sup> Now forfeiture attaches to hundreds of crimes, many if not most of which are purely domestic. The U.S. Department of Justice’s forfeiture database, for example, contains over 377 unique statutes authorizing forfeiture.<sup>10</sup>

Forfeiture also poses a separation of powers concern. In allowing agencies to self-fund outside the normal appropriations process and with little oversight, it undermines legislatures’ power of the purse and invites questionable expenditures, such as \$70,000 for a muscle car

in Georgia,<sup>11</sup> \$250,000 for lavish travel and meals in New York,<sup>12</sup> and \$300,000 for an armored vehicle in Iowa.<sup>13</sup>

Recent rulings from the U.S. and Indiana Supreme Courts highlight another constitutional problem with forfeiture: If disproportionate to the alleged crime, a forfeiture can violate the Eighth Amendment’s prohibition on excessive fines.<sup>14</sup> And forfeiting an innocent person’s property is always disproportionate.

Beyond its constitutional problems, forfeiture poses policy concerns. For example, forfeiture’s financial incentive may promote negative interactions between police and the public, a particular risk to communities of color.<sup>15</sup> Indeed, there is evidence forfeiture disproportionately affects Black men.<sup>16</sup> And recent research finds increases in arrest rates for Blacks and Hispanics during times of fiscal stress and when law enforcement can benefit financially from forfeiture under state law.<sup>17</sup> Not only may forfeiture target communities least equipped to fight back, it may further burden lower-income and other disadvantaged communities by depriving them of needed resources.<sup>18</sup>

This third edition of *Policing for Profit* presents the largest collection of state and federal forfeiture data yet assembled and provides newly updated grades of state and federal civil forfeiture laws. It also draws on a growing body of evidence regarding whether forfeiture works to fight crime.<sup>19</sup> The conclusion: Civil forfeiture overpromises and underdelivers.



## Gathering Nationwide Data to Study Forfeiture

This volume's extensive compilation of state and federal forfeiture data is thanks to improved reporting laws and practices—spurred in large part by IJ's efforts—as well as broader and more granular data collection enabled by our substantial institutional experience with forfeiture reporting. We gained this experience, on which we continue to build, from collecting data for the second edition of *Policing for Profit* and from creating and maintaining our *Forfeiture Transparency & Accountability* report cards (see “Despite Progress, Forfeiture Transparency and Accountability Remain Limited” on p. 12).<sup>20</sup>

Transparency in forfeiture programs and spending from forfeiture funds is important for several reasons. First, transparency generally allows legislators and the public to hold law enforcement agencies to account for their forfeiture activity and spending, promoting responsible management of public funds and likely deterring some bad behavior. Second, it can help legislators and the public gauge whether forfeiture is effective policy. And third, in shedding light on abuse as well as on forfeiture's efficacy, or lack thereof, transparency can drive momentum for substantive reform.

However, despite improvements over the past five years, most states' forfeiture tracking and reporting falls far short of the ideal. Among other deficiencies, most states still do not require that forfeiture reports or other records be published online, forcing interested parties to file public records requests. Indeed, much of the data IJ obtained for this report came from such requests—not easily accessible compilations of data. Our research team worked extensively to manage the hundreds of public records requests IJ filed in pursuit of forfeiture data since the previous edition of this report, a task far beyond the time or abilities of ordinary citizens, public officials charged with law enforcement oversight and, increasingly, the media. We even had to sue two federal agencies for access to their forfeiture data.<sup>21</sup>

It is not uncommon for records requests to be met with resistance. For example, when Carter Walker, a reporter with the Pennsylvania news outlet *LancasterOnline*, requested forfeiture records from the Lancaster County District Attorney's Office, the then-DA

relied on irrelevant exemptions from the state's Right-to-Know Law to withhold many of the records requested.<sup>22</sup> So Carter and LNP, *LancasterOnline*'s parent company, teamed up with IJ to sue to make Lancaster County and neighboring Berks County forfeiture records available to the public.<sup>23</sup>

This case underscores why transparency is so important. Though the case is still ongoing, Carter's reporting fueled public concern and prompted the new DA to audit the office's forfeiture account. The audit found \$150,000 missing from the account, neatly demonstrating how mismanagement and illegal activity can go undetected without transparency.<sup>24</sup>

Also illustrating the importance of transparency are many of the analyses in this report. For example, thanks to some states' very detailed data describing individual forfeited properties, this report is able to show just how small most currency forfeitures are. These analyses suggest that, all too often, forfeiture is targeting not major criminal enterprises but rather ordinary people (see “Big-Time Criminals or Small-Time Forfeitures?” on p. 20). Such findings paint an alarming picture and call into question proponents'

claims that forfeiture is a crucial crime-fighting tool (see “Evidence Suggests Forfeiture Doesn't Work” on p. 51).

In all, we gathered records from the forfeiture programs of 45 states, the District of Columbia, and the U.S. departments of Justice and the Treasury.<sup>25</sup> For 28 states, we obtained revenue data describing individual forfeited properties—a total of 355,000 properties for the 24 states with usable data. For another 11 states, we obtained revenue data for individual agencies or prosecutors' offices. We also collected data on spending from forfeiture funds for 17 states, the largest collection of such data.

We organized all these data into a single database for a total of over 17 million data points across 45 states. The breadth and detail of these data allow us to conduct new nationwide analyses, giving us a clearer picture of forfeiture across the United States than previously possible. Readers can browse visualizations of the size and scope of forfeiture and download our data online. Our State Profiles starting on p. 59 provide key data by state.



After the Lancaster County DA's office denied journalist Carter Walker forfeiture records, he and his employer, LNP Media Group, teamed up with IJ to sue.



## Despite Progress, Forfeiture Transparency and Accountability Remain Limited

IJ's *Forfeiture Transparency & Accountability* report cards grade each state, D.C., DOJ and Treasury on six key elements of forfeiture transparency and accountability. Few states earn high marks across the board: Only Arizona receives all As and Bs. At the other end of the spectrum, Alaska, Montana and North Carolina receive all Fs—reflecting a complete lack of transparency. Many other states receive mostly Ds and Fs. The following tables summarize how states perform on each element.

### Tracking Seized Property

Tracking key details about seized property, as well as related forfeiture and criminal cases, allows officials to responsibly manage property and properly evaluate forfeiture programs.

Grade	Number of Details Tracked	States and Federal Departments	State/Dep't Counts
<b>A+</b>	20	Arizona	1
<b>A</b>	18–19	New Jersey	1
<b>A-</b>	17	Kansas, DOJ	2
<b>B+</b>	16	Vermont	1
<b>B</b>	14–15	Alabama, Colorado, Oregon, Virginia	4
<b>B-</b>	13	Michigan, North Dakota	2
<b>C+</b>	12	Idaho, Minnesota, Utah	3
<b>C</b>	8–11	Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Missouri, Nebraska, Nevada, New York, Pennsylvania, Tennessee, West Virginia, Wyoming, Treasury	17
<b>C-</b>	7	Arkansas, Washington	2
<b>D+</b>	6	Mississippi, Oklahoma, South Dakota	3
<b>D</b>	4–5	California, D.C., Maine, Massachusetts, New Hampshire, Ohio, Rhode Island, South Carolina, Texas	9
<b>D-</b>	3	Kentucky, New Mexico, Wisconsin	3
<b>F</b>	0–2	Alaska, Delaware, Louisiana, Montana, North Carolina	5

### Accounting for Forfeiture Fund Spending

Specifying the purpose of forfeiture fund expenditures promotes legislative oversight and responsible management of public funds.

Grade	Number of Spending Categories Tracked	States and Federal Departments	State/Dep't Counts
<b>A</b>	9–10	Arizona, Colorado, Delaware, Florida, Georgia, Iowa, Kansas, Oregon, Texas, Utah, Wisconsin, Wyoming	12
<b>B</b>	7–8	Pennsylvania	1
<b>C</b>	4–6	Illinois, Ohio, Virginia, DOJ, Treasury	5
<b>D</b>	2–3	Nevada, New York	2
<b>F</b>	0–1	Alabama, Alaska, Arkansas, California, Connecticut, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Washington	26
<b>N/A</b>	Agencies not permitted to spend forfeiture revenue	D.C., Maryland, Missouri, New Mexico, North Carolina	5

Note: New Jersey and West Virginia are excluded because their reports are not yet available.

## Statewide Forfeiture Reports

Statewide (or department-wide) forfeiture reports make it easier to evaluate forfeiture programs. The best reports provide (1) agency-by-agency data about (2) both seizures and forfeiture fund spending, (3) are compiled annually and (4) are submitted to the legislature.

Grade	Number of Criteria Met	States and Federal Departments	State/Dep't Counts
<b>A</b>	4	Arizona, Colorado, Kansas, Massachusetts, Missouri, New Hampshire, Oregon, Pennsylvania, Utah, Virginia, West Virginia, DOJ	12
<b>B</b>	3	Arkansas, California, Delaware, Florida, Hawaii, Illinois, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Mexico, New York, Rhode Island, Tennessee, Wyoming, D.C., Treasury	19
<b>C</b>	2	Indiana, Kentucky, South Dakota	3
<b>D</b>	1	Texas	1
<b>F</b>	0	Alaska, Connecticut, Georgia, Idaho, Iowa, Maine, Mississippi, Montana, North Carolina, Ohio, Oklahoma, South Carolina, Vermont, Washington, Wisconsin	15

Note: Alabama, North Dakota and New Jersey are excluded because their new reports are not yet available.

## Accessibility of Forfeiture Records

Laws requiring that forfeiture reports and other records be published online make forfeiture information easily accessible to legislators and the public.

Grade		States and Federal Departments	State/Dep't Counts
<b>A</b>	Required by law to be published online	Alabama, Colorado, D.C., Georgia, Illinois, Kansas, Maryland, Michigan, Missouri, Mississippi, North Dakota, New Hampshire, New Jersey, New Mexico, Nevada, Tennessee, Texas, Utah, West Virginia, DOJ, Treasury	21
<b>B</b>	Published online, although not required to be	Arizona, California, Florida, Hawaii, Iowa, Indiana, Massachusetts, Minnesota, Nebraska, New York, Oregon, Virginia, Wisconsin	13
<b>C</b>	Designated by law as public records subject to freedom-of-information requests	Arkansas, Delaware, Ohio, South Carolina	4
<b>D</b>	Known to exist, but not explicitly designated as public records	Connecticut, Idaho, Kentucky, Louisiana, Maine, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, Wyoming	12
<b>F</b>	No known records	Alaska, Montana, North Carolina	3

## Penalties for Failure to File a Report

Strict penalties for failure to file required forfeiture reports and to do so on time are more likely to induce agency compliance.

Grade		States and Federal Departments	State/Dep't Counts
<b>A</b>	Forfeiture funds withheld until report filed and agency fined for late filing	Georgia	1
<b>B</b>	Forfeiture funds withheld until report filed	Arizona, Arkansas*, Delaware, Kansas*, Kentucky, Mississippi, New Jersey*	7
<b>C</b>	Agency fined or forced to pay for audit	Colorado*, Florida*, Missouri, Texas*	4
<b>D</b>	Agency identified in statewide report for failure to file	California, Maryland*, Michigan*, Nevada*, Pennsylvania, Utah	6
<b>F</b>	None	Alabama, D.C., Hawaii, Idaho, Illinois, Indiana*, Iowa, Louisiana, Massachusetts, Minnesota, Nebraska*, New Hampshire, New Mexico*, New York, North Dakota, Oregon, Rhode Island, Tennessee, Vermont, Virginia*, Washington*, West Virginia*, Wisconsin, Wyoming, DOJ*, Treasury*	26
<b>Incomplete</b>	No reporting requirements to enforce	Alaska, Connecticut, Maine, Montana, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota	9

\* Indicates agencies must file even when they have nothing to report. Such "null" reports enable oversight bodies to identify agencies that are failing to comply.

## Financial Audits of Forfeiture Accounts

Regular independent audits ensure greater integrity in accounting for forfeiture revenue and spending.

Grade		States and Federal Departments	State/Dep't Counts
<b>A</b>	Annual or biennial independent audit	Arizona, Arkansas, Colorado, Illinois, New Jersey, Pennsylvania, South Carolina, Tennessee, Texas, DOJ, Treasury	11
<b>B</b>	Annual or biennial internal audit	Michigan	1
<b>C</b>	Subject to independent audit at government oversight body's discretion	California, Georgia, New York, Virginia, West Virginia	5
<b>D</b>	Subject to internal audit at government oversight body's discretion	Louisiana	1
<b>F</b>	None	Alabama, Alaska, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, Wyoming	30
<b>N/A</b>	All forfeiture proceeds directed to a general fund	D.C., Maryland, Missouri, New Mexico, North Carolina	5

See [ij.org/TransparencyReportCards](https://www.ij.org/TransparencyReportCards) for the full report cards and grading methods.

## Forfeiture Is Lucrative for Governments Nationwide

By any measure, our data show forfeiture activity is extensive nationwide. In 2018 alone, the year for which we have data from the greatest number of states, 42 states,<sup>26</sup> D.C. and the federal government forfeited over \$3 billion. Of that, \$500 million was forfeited under state law and \$2.5 billion under federal law through DOJ's and Treasury's forfeiture programs. Looking at fewer states but over a longer period, 20 states,<sup>27</sup> DOJ and Treasury forfeited over \$63 billion from 2002 to 2018—\$21 billion under state law and nearly \$42 billion under federal. The total forfeited since 2000 across all states in our database and the federal government is larger still: \$68.8 billion, including over \$23 billion under state law and almost \$46 billion under federal.

It should be noted that the federal government shares substantial sums from the proceeds of federal forfeitures with state and local agencies that participate in its equitable sharing program. Equitable sharing allows state and local law enforcement agencies to partner with the federal government to seize and forfeit property under federal law—and receive up to 80% of the proceeds—regardless of state law (see “Equitable Sharing Creates a Giant Loophole” on p. 46). Of the nearly \$46 billion forfeited by the federal government since 2000, almost one-fifth of it ultimately went to state and local agencies participating in equitable sharing. This means far less money lands in federal coffers—and far more lands in state coffers—than these figures suggest.

Our dataset, though immense, also underestimates state forfeiture activity in other, more important, ways. Most obviously, we do not have revenue data for all states, nor even for most states, covering the entire 20-year study period. Some states, like Alaska, have never required any statewide reporting.<sup>28</sup> Many others require reporting now but did not during part or all of the study period, while Ohio, swimming against transparency's rising tide, gutted its reporting requirements in 2012.<sup>29</sup> And in some states with reporting requirements, agencies fail to report as required. This has been the case in Mississippi,<sup>30</sup> for example, and, until recently, Kentucky.<sup>31</sup>

Even states with a long track record of maintaining forfeiture records paint an incomplete picture. For

example, many states track only drug-related forfeitures, leaving forfeitures stemming from other crimes unaccounted for. Some states track forfeiture activity merely for financial accounting reasons—not with the intent to shine a light on how agencies are using forfeiture. Rather than report the value of each forfeiture, such states typically report only the total of forfeited currency and proceeds from forfeited property that was sold. And many states report only net revenues after factoring out property maintenance expenses, like vehicle towing or repair, thus deflating the total value of property taken.

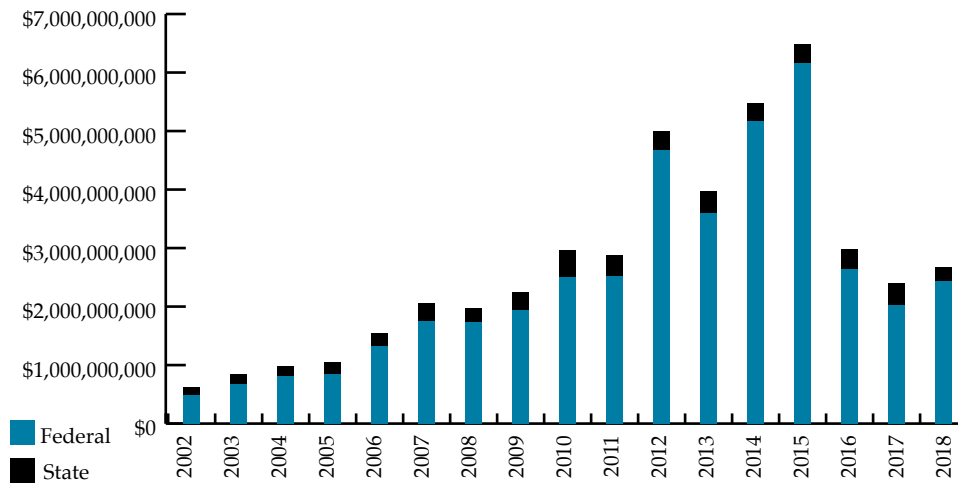
Finally, other states simply have less than optimal methods of tracking forfeiture activity. For example, Missouri prosecuting attorneys report annually but do not report on forfeitures of property seized in previous years. Arkansas and Mississippi do not consistently track whether property is forfeited (as opposed to returned) and instead estimate forfeitures using the values of seized property, which are themselves estimates.<sup>32</sup> These reporting variations mean a substantial chunk of revenue is missing from our data, making our estimates of state forfeiture activity undercounts.

**In 2018 alone, the year for which we have data from the greatest number of states, 42 states, D.C. and the federal government forfeited over \$3 billion.**

### State and Federal Forfeiture Revenues

Through the early 2000s, forfeiture revenues saw steady growth, much of it at the federal level, before spiking sharply in 2012. The particularly lucrative years between 2012 and 2015 are partly attributable to a few unusually large federal forfeitures—in the hundreds of millions and even billions of dollars—related to financial fraud cases.<sup>33</sup> Absent these, forfeiture revenues have plateaued in recent years with a dip in 2017 (see Figure 1). And while state revenues overall have generally increased since the early 2000s, specific state trends vary, partly due to changes in reporting. Improved reporting over time likely inflates the upward trend.

**Figure 1: Federal Revenues and 20 States' Combined State Revenues, 2002–2018**



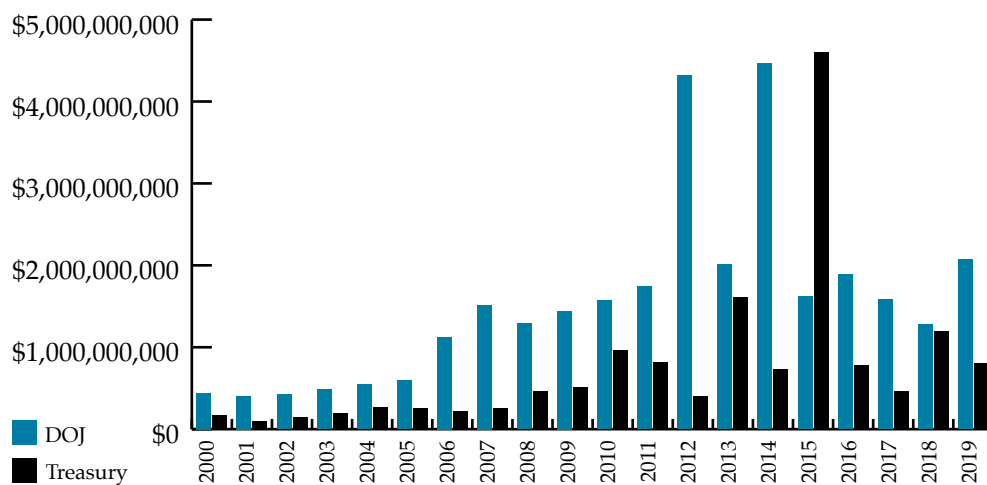
Note: The 20 states are Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Minnesota, Missouri, Montana, New York, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia, Washington and Wyoming. In 2014 and 2015, New York had unusually high revenues. Though included in overall reported totals, these are excluded from this figure as outliers. See data notes in State Profiles for state source details. Federal totals include both DOJ's and Treasury's forfeiture fund deposits. Federal data are from DOJ's and Treasury's annual forfeiture reports. Figures are not adjusted for inflation.

### Federal Forfeiture Revenue Trends

Federal figures alone show a similar pattern to the general trend: growth through the mid-2010s, followed by declines to early 2010s levels. This is not surprising given that a few large forfeitures drove much of the overall growth between 2012 and 2015. As the following tables and figures show, this holds true for both deposits to federal forfeiture funds and net assets, or the value of assets remaining after expenses.

Figure 2 presents data on deposits to DOJ's Assets Forfeiture Fund (AFF) and Treasury's Treasury Forfeiture Fund (TFF). These deposits represent proceeds from forfeitures conducted by agencies participating in DOJ's and Treasury's forfeiture programs, including proceeds later paid to state and local agencies participating in federal equitable sharing.

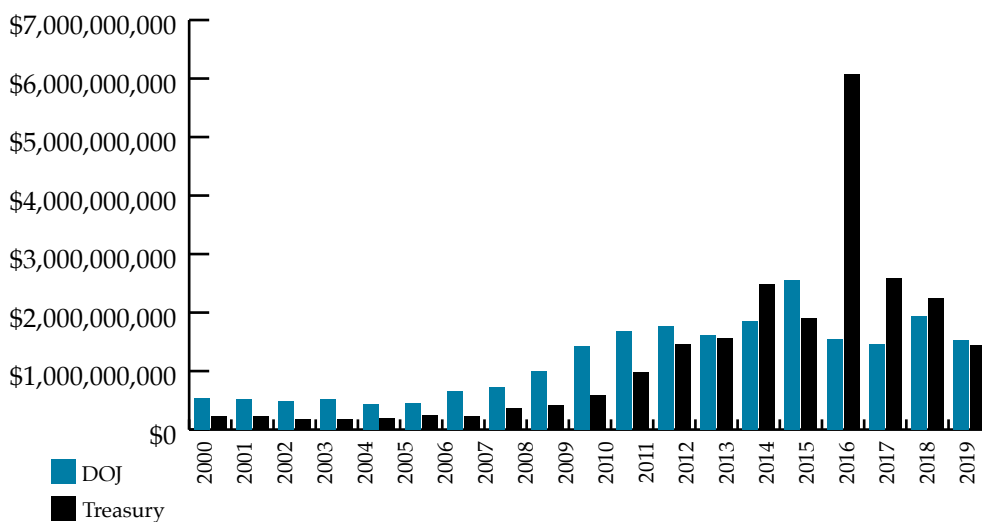
**Figure 2: Total Annual Deposits to DOJ and Treasury Forfeiture Funds, FY 2000–2019**



Note: Data are from DOJ's and Treasury's annual forfeiture reports. Figures are not adjusted for inflation.

Figure 3 presents another way of looking at federal forfeiture activity: net assets. Net assets are generally more stable over time, partly due to outlays for payments to third parties, such as victim compensation in financial fraud and other cases and equitable sharing payments to state and local law enforcement. Such payments spiked between 2016 and 2019, partly explaining the larger swings in the deposit data. Also helping to account for discrepancies between deposits and net assets are rescissions, which Congress has used to take money from the AFF and TFF and redirect it to the federal government’s general fund for other agencies to spend. Rescissions from the AFF were in the hundreds of millions each year from 2016 through 2019 and highest in 2016 and 2019.<sup>34</sup> The TFF likewise saw large rescissions and other cuts between 2014 and 2019.<sup>35</sup> As for the single spike in TFF net assets over the 20-year period, in 2015, Treasury attributes it to a \$3.8 billion financial fraud forfeiture case where funds had not yet been returned to victims by fiscal year-end.<sup>36</sup>

**Figure 3: Total Net Assets of DOJ and Treasury Forfeiture Funds, FY 2000–2019**



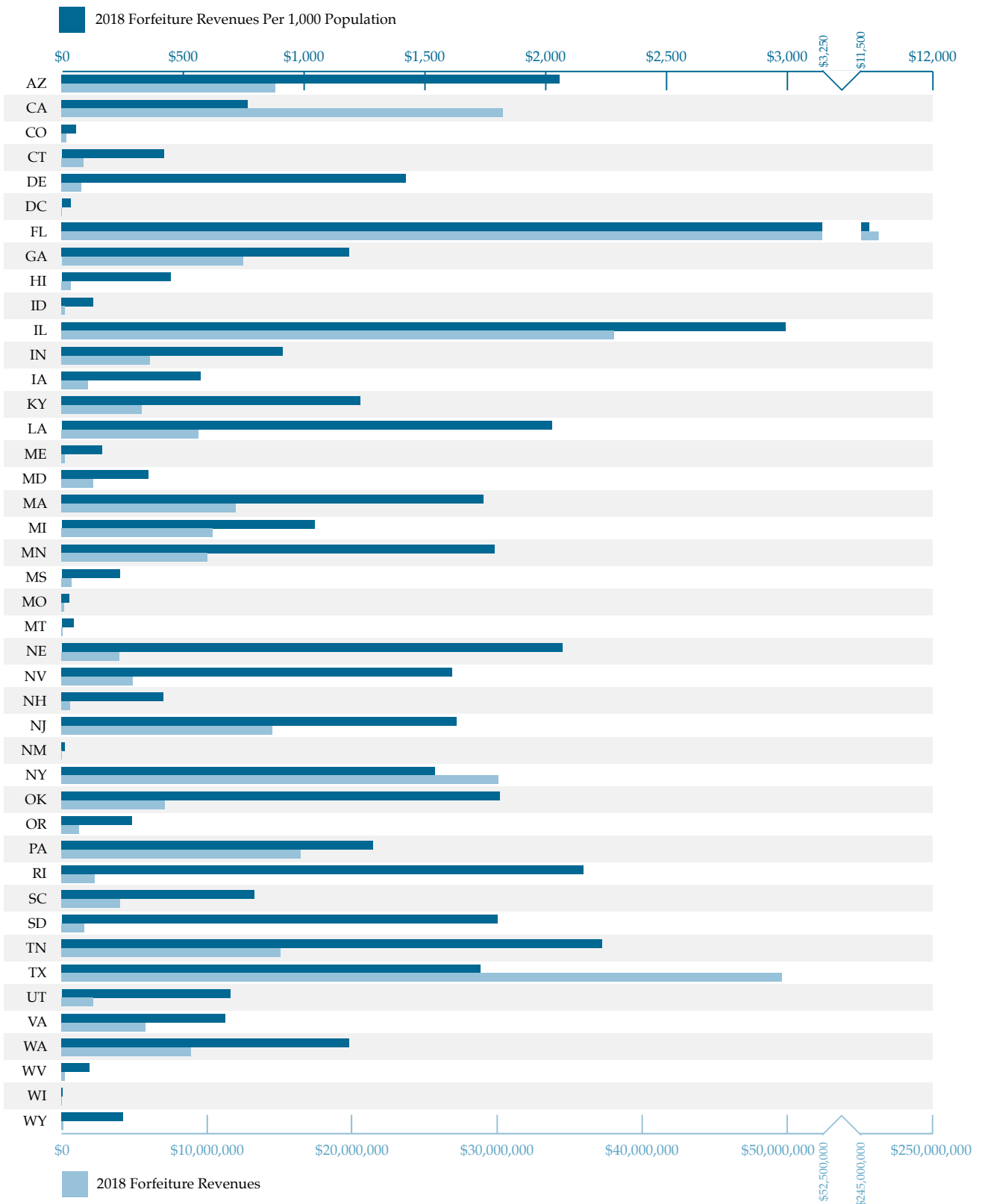
Note: Data are from DOJ’s and Treasury’s annual forfeiture reports. Figures are not adjusted for inflation.

### State Forfeiture Revenue Trends

State-level trends are more difficult to identify, largely due to reporting changes over time, both within and across states. One thing that is apparent is that states vary in their use of forfeiture under state law.

Looking at 2018, the year for which we have data from the most states, Florida, Texas, Illinois, California and New York used forfeiture most extensively (see Figure 4). This is perhaps unsurprising given these are five of the most populous states and therefore likely to see more law enforcement activity—and consequently more forfeiture activity—than smaller states. To get a sense of which states might make greater use of forfeiture than one would expect given their size, we standardized the states’ forfeitures by their populations.<sup>37</sup> Holding the population steady, Florida’s and Illinois’ forfeiture use still outpaced that of other states, while Tennessee, Rhode Island and Nebraska also generated particularly large amounts of forfeiture revenue.

**Figure 4: State Forfeiture Revenues and Revenues Per 1,000 Population, 2018**



Note: See data notes in State Profiles for source details and more information about what each state's revenues represent. Data may not cover the same 12-month period for all states. We do not have data for Alabama, Alaska, Arkansas, Kansas, North Carolina, North Dakota, Ohio or Vermont.

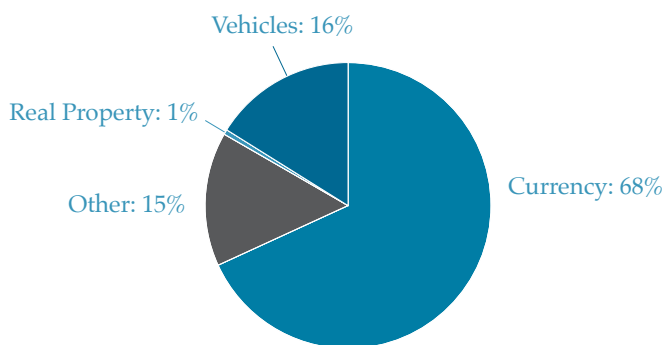
## What Do States Forfeit? Cash Is King

Although state revenue trends are difficult to identify, state data do paint a rich picture of other important topics, including the types of property states seize and forfeit most often. The data suggest law enforcement is focused on taking cash and property that is easy to convert into cash, such as cars.

Across 15 states for which we have reliable property data for 2018,<sup>38</sup> currency—primarily cash—predominates, accounting for an average of nearly 70% of forfeited property (see Figure 5). It is followed by vehicles and then other property like weapons and electronics. Real property, such as homes, comes a distant last. In all but two states—Florida and Minnesota—currency is by far the most frequently forfeited property.

In the states where currency forfeitures predominate, as well as in many other states that report types of property forfeited at an aggregated state or agency level, currency also accounts for higher shares of forfeiture revenue, although vehicles and other property are not always reliably valued.<sup>39</sup> The trend would likely hold if they were, but the precise dollar-value difference between currency and non-currency forfeitures may be unreliable.

**Figure 5: Forfeited Properties, 15-State Average, 2018**



Note: The 15 states are Arizona, Colorado, Connecticut, Florida, Georgia, Illinois, Maryland, Michigan, Nebraska, Minnesota, Nevada, Oregon, Pennsylvania, Utah and Wyoming. Data may not cover the same 12-month period for all states. See data notes in State Profiles for source details.

Florida is the first exception to the “cash is king” rule. In its short history of reporting, covering 2017 and 2018, 47% of forfeited properties were vehicles<sup>40</sup> and another 47% were currency. But when measured in dollars, currency again reigns supreme, accounting for 83% of forfeiture revenue. These data, however, account for just 12% of Florida agencies’ total reported forfeiture proceeds, as many agencies do not report individual property values, only the total amount forfeited.<sup>41</sup> For this reason, they may not be representative of all forfeited properties in the state.

Minnesota is the second exception. In that state, reports show vehicle forfeitures spiking suddenly, overtaking currency forfeitures, in 2010. In that year,

Minnesota first required agencies to report forfeitures related to DWI violations.<sup>42</sup> These account for a large proportion of vehicle forfeitures in the state—77% between 2010 and 2018—and are highly lucrative for Minnesota law enforcement. Sales of vehicles forfeited for DWI violations have accounted for over 40% of Minnesota’s state forfeiture revenues—about \$33 million—since the state began tracking them.<sup>43</sup>

Outside Florida and Minnesota, there are a couple likely reasons for currency forfeitures’ predominance. First, law enforcement may believe taking cash and other currency denies criminals the “lifeblood” of their activity and the benefit of their ill-gotten gains. Former Attorney General Jeff Sessions’ attitude is typical: “Civil asset forfeiture takes the material support of the criminals and instead makes it the material support of law enforcement. . . . In departments across the country, funds that were once used to take lives are now being used to save lives.”<sup>44</sup> So, too, is the perspective of the Alabama law enforcement officials who wrote, “It would make no sense to allow those who traffic in crime to keep the proceeds of their crimes. That would reward criminality.”<sup>45</sup>

Indeed, proponents often justify civil forfeiture by claiming it “remov[es] the proceeds of crime,”<sup>46</sup> thereby “weaken[ing] the criminals and the cartels,” “prevent[ing] new crimes from being committed,”<sup>47</sup> and “mak[ing] sure that crime does not pay.”<sup>48</sup> And in some states, the law presumes any cash found near drugs is drug money.<sup>49</sup> As one Kentucky prosecutor put it, “The more somebody screams they want that [seized] money, the more likely it is that we’re going to say, ‘Well, that’s evidence that you’re using it for trafficking.’”<sup>50</sup>

A second possible reason currency forfeitures predominate is that cash is relatively efficient compared to other property types—easy to seize, easy to transport and store, and, crucially, easy to spend. Where many other types of property may be more difficult to transport and store after seizure and during a pending forfeiture action, cash is compact. Its value is also self-evident, while other property must be appraised. And once forfeited, cash immediately becomes revenue, available for law enforcement to spend. Less liquid property not retained for agency use must be sold, donated or destroyed—all of which comes with a cost. For more valuable property such as cars or homes, the effort required may be worthwhile.<sup>51</sup> But most miscellaneous personal property is unlikely to fetch much at auction—if it can be sold at all.

While the appeal of seizing cash is easy to understand, such seizures are hard to justify from a public policy standpoint. As we will discuss below, there is little evidence for forfeiture’s efficacy in “disrupt[ing] or dismantl[ing] criminal organizations”<sup>52</sup> or for the proposition that money taken through forfeiture increases



police efficiency.<sup>53</sup> (See “Evidence Suggests Forfeiture Doesn’t Work” on p. 51.) And there is concern, as well as anecdotal evidence, that cash’s very efficiency encourages police to pursue cash over contraband, like drugs, when given the choice.<sup>54</sup> As one state representative advocating forfeiture reform put it, “If you are really after going after drug traffickers first and foremost, why don’t you seize their drugs instead of seizing their cash?”<sup>55</sup>

A focus on cash also effectively criminalizes traveling with cash or keeping cash in one’s home. Traveling with cash or keeping cash at home—even in large amounts—is entirely legal, and people may have any number of legitimate reasons for doing so. For example, Eh Wah, mentioned in the introduction, was carrying concert proceeds and charitable donations raised by the Burmese Christian band whose tour he was managing.<sup>56</sup> And Terry Rolin’s life savings were seized from his daughter as she was on her way to deposit the money in a bank.<sup>57</sup> Others have had cash in the tens of thousands of dollars seized that they were saving to buy a music studio,<sup>58</sup> to purchase

a vacation home in their home country,<sup>59</sup> and to build a free medical clinic for Nigerian women and children.<sup>60</sup> In none of these cases was anyone ever convicted of a crime.

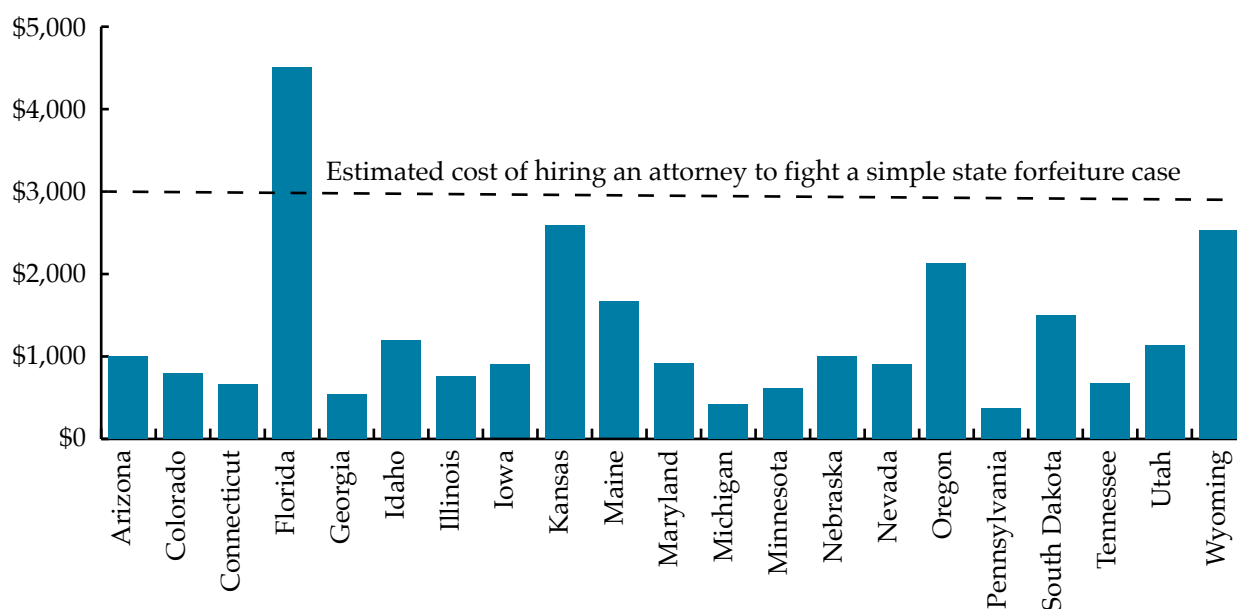
Cash seizures are also more likely than other seizures to deny owners the financial wherewithal they need to fight back, leaving them with fewer—or no—resources with which to hire an attorney or pay any bonds required to challenge a forfeiture action.<sup>61</sup> This is likely to present a particular burden for disadvantaged populations, who may have fewer resources anyway.<sup>62</sup>

Such populations may be at special risk of having their cash seized in the first place.<sup>63</sup> Lower-income, less-educated, younger, Black, Hispanic and working-age disabled households are all less likely to have access to bank accounts.<sup>64</sup> “Unbanked” or “underbanked” individuals may be more likely to carry cash or keep large amounts of cash in their homes—and to do so for innocent reasons—and to lose their money to forfeiture as a result.

### Big-Time Criminals or Small-Time Forfeitures?

While forfeiture proponents tout the importance of forfeiture for going after the El Chapos and Bernie Madoffs of the world,<sup>65</sup> the reality is that the typical forfeiture is hardly the stuff of drug kingpins or major fraudsters. In the 21 states with available data,<sup>66</sup> most currency forfeited in recent years was under \$2,000 (see Figure 6), an average of \$1,276 across all states. In most of the 21 states, the median forfeiture is even smaller—often much smaller. For example, half of Michigan’s currency forfeitures were less than \$423; half of Pennsylvania’s were less than \$369.

Figure 6: Median Currency Values, 21 States, 2015–2019



Note: Data cover a mix of calendar and fiscal years. Not all states had data for all five years. See data notes in State Profiles for applicable years and sources.

At \$4,500, Florida's median currency forfeiture is nearly \$2,000 higher than the next closest state's. A 2016 reform may help explain this finding.<sup>67</sup> The reform requires law enforcement to pay a \$1,000 filing fee and post a \$1,500 bond when filing for forfeiture. (If the agency wins, the bond is returned; if it loses, the bond is paid to the property owner.) These unique upfront costs make forfeitures under \$1,000 unprofitable for law enforcement while also reducing the return on forfeitures over \$1,000 and making forfeitures under \$2,500 riskier. This likely encourages a focus on higher-value property. Florida's higher median illustrates how financial incentives may influence law enforcement actions—when certain types of forfeitures are less profitable, agencies will likely conduct fewer of those forfeitures.<sup>68</sup> At the same time, it should be noted that \$4,500, though higher than other states' medians, is still a low enough figure that it likely is not worth the hassle and cost of hiring an attorney to fight forfeiture, especially given the risk of losing.

The low median value of most forfeitures is in line with media reports about forfeiture activity. For example, from 2012 to 2017, Cook County, Illinois, law enforcement conducted over 23,000 seizures totaling \$150 million. The median value of these seizures was just \$1,049, and approximately three-quarters of the seizures were of cash (most of the rest were vehicles). Many of these seizures, including most cash seizures of less than \$100, were clustered in the poorest parts of Chicago.<sup>69</sup>

Such low median forfeiture values likely discourage owners from contesting forfeiture, especially given the expense of fighting back. In some jurisdictions, owners must pay a filing fee to contest. Even modest filing fees can discourage owners of such small sums. And some jurisdictions' filing fees are substantial. For example, in

Hudson County, New Jersey, where law enforcement has seized amounts as small as \$11, the filing fee for owners is \$175.<sup>70</sup> Then, of course, owners must hire their own attorney—if they can afford one. And even if they can afford legal representation, they may still decide it makes more financial sense to cut their losses. Conservatively estimated, hiring an attorney to fight a relatively simple state forfeiture case costs at least \$3,000<sup>71</sup>—more than double the national median currency forfeiture and only \$1,500 less than Florida's median currency forfeiture.

Hiring an attorney to fight a federal forfeiture case is considerably more expensive,<sup>72</sup> as Manni Munir, the owner of an independent rental car company based in Houston, found out. A U.S. Drug Enforcement Administration task force pulled over one of Manni's customers and found a horde of drugs and weapons in his rental car. The task force seized the car and is attempting to forfeit it under federal law, even though Manni has tried to help with the investigation. An attorney he talked to estimated fighting back would cost him at least \$5,000, only \$2,500 less than he paid for the car when he bought it a few years prior. "If I was Hertz, if I was Avis, they wouldn't try to seize the car," Manni said.<sup>73</sup>

In many states, owners are not entitled to recover attorney fees if they win and may even have to pay the government's attorney fees if they lose.<sup>74</sup> Even where a right to attorney fees does exist, as it does at the federal level and in some states, recovery is not guaranteed. For example, the federal government has avoided paying attorney fees by returning property before it could lose in court, arguing that the owner did not "substantially prevail."<sup>75</sup> From this perspective, challenging a low-value forfeiture might seem like throwing good money after bad.

## Curbing “Excessive” Forfeitures

The Eighth Amendment to the U.S. Constitution protects people from excessive fines, and it is not hard to see how a forfeiture could constitute punishment gone too far. For example, taking a home for a minor drug infraction punishable by only a modest fine would seem to be excessive—as would taking property from anyone not found guilty of a crime.<sup>1</sup>

Until recently, however, it was unclear whether the Eighth Amendment’s ban on excessive fines and forfeitures applied to states and localities as well as to the federal government. The U.S. Supreme Court resolved that question in February 2019; in *Timbs v. Indiana*, the Court confirmed that the Excessive Fines Clause applies to all levels of government—federal, state and local alike. Now the onus is on lower courts to breathe life into the Excessive Fines Clause by developing rules to determine when economic sanctions, including forfeitures, are unconstitutionally excessive.<sup>2</sup>

History provides guideposts. The Excessive Fines Clause has a rich heritage, dating to at least Magna Carta in 1215. It embodies the principle that a fine or forfeiture cannot be disproportionate to the underlying crime. Nor can a fine or forfeiture be so punitive that it renders a person destitute or takes away their means of supporting themselves. That is why when Indiana tried to forfeit Tyson Timbs’ Land Rover, the trial judge refused. Tyson had been convicted of a minor drug charge and sentenced to probation and a small fine. Under the law, the maximum fine was \$10,000, but that did not stop prosecutors from seizing and seeking to forfeit Tyson’s \$42,000 vehicle. Deeming the forfeiture grossly disproportionate, the judge denied the forfeiture for violating the Excessive Fines Clause.<sup>3</sup>

After working its way through the state court system, Tyson’s case eventually arrived at the U.S. Supreme Court. The Court held unanimously that the Excessive Fines Clause applies to the states and remanded the case to the Indiana Supreme Court to determine whether forfeiting Tyson’s vehicle would indeed be “excessive.”<sup>4</sup>

In considering that question, the Indiana Supreme Court developed a new test that points the way forward for other courts.<sup>5</sup> The Court held that determining excessiveness involves two factors: (1) instrumentality and (2) proportionality. First,



the property must be an instrumentality—or a means to the end—of the underlying crime. Second, the forfeiture cannot be “grossly disproportional” to the gravity of the offense. This analysis looks at all the circumstances of a particular crime and individual offender. For example, courts must consider how losing the property would affect its owner, the property’s value and any other sanctions imposed on the owner. Against these considerations of harshness, courts must weigh both the severity of the offense—the harm caused, statutory penalties and the offense’s relationship to other criminal activity—and the owner’s personal culpability.<sup>6</sup>

Back at the trial court, the same judge once again denied the government’s request to forfeit Tyson’s car, this time using the Indiana Supreme Court’s new test.<sup>7</sup> While Tyson was guilty of selling a small amount of drugs on two occasions to undercover agents, the trial judge found that he was “no drug ‘kingpin.’” Rather, he committed his crime to feed his addiction—an addiction that began with prescription drugs for a foot injury—and only at the behest of undercover officers. To forfeit his car in these circumstances would be excessively punitive, the court reasoned, and deprive Tyson of his most valuable asset and his means of getting to work and drug treatment. Balancing these considerations, the court denied the forfeiture. After more than seven years of litigation, the government’s latest appeal remains pending.

For now, Tyson has his car back.<sup>8</sup> But even better, Indiana’s courts have given life to the Excessive Fines Clause, protecting all Hoosiers from excessive fines and forfeitures. Courts across the country would do well to follow in Indiana’s footsteps.

1 This really happens. In just one example, the city of Philadelphia attempted to take the home of Cristos (Chris) and Markela Sourovelis because, unbeknownst to them, their son sold \$40 worth of drugs, a first-time offense for which he was sentenced to a diversion program. Chris and Markela, the homeowners, were innocent, but that did not matter to the city. Third Amended Complaint, *Sourovelis, et al., v. City of Philadelphia et al.*, Case No. 2:14-cv-04687 (E.D. Pa. Sept. 18, 2018), Doc. No. 251-1, <https://ij.org/wp-content/uploads/2014/08/Third-Amended-Complaint.pdf>

2 *Timbs v. Indiana*, 139 S. Ct. 682, 689 (2019).

3 Pet. for Writ of Certiorari at 6–9, *Timbs v. Indiana*, 139 S. Ct. 682 (2019).

4 *Timbs v. Indiana*, 139 S. Ct. 682, 689 (2019).

5 *State v. Timbs*, 134 N.E.3d 12, 27 (Ind. 2019).

6 See section 100:20 of the Institute for Justice’s model criminal forfeiture law for the seven factors in a proportionality test. See also Institute for Justice. (2020). *Criminal Forfeiture Process Act* [Model legislation]. Arlington, VA. <https://ij.org/wp-content/uploads/2020/07/07-23-2020-Criminal-forfeiture-legislation-FULL.pdf>

7 Findings of Fact, Conclusions of Law and Judgment, *State v. Timbs*, Case No. 27D01-1308-MI-92 (Grant Cnty. Super. Ct., Ind., Apr. 27, 2020) (on remand from *State v. Timbs*, 134 N.E.3d 12, 27 (Ind. 2019)).

8 Kramer, J. (2020, May 27). Indiana returns vehicle in landmark civil forfeiture case, but government continues its appeal [Press release]. Arlington, VA: Institute for Justice. <https://ij.org/press-release/indiana-returns-vehicle-in-landmark-civil-forfeiture-case-but-government-continues-its-appeal/>

## Forfeiture Is Hard for Owners, Easy for the Government

On top of the low value of many seizures and the high legal costs of challenging a forfeiture action, civil forfeiture also generally requires owners to take affirmative steps to even be eligible to recover their property. First, owners must initiate a lawsuit in court, file a claim with the seizing agency or prosecutor, or respond to the government in court. This can be far from straightforward, and it is only the beginning of a lengthy and costly process that stacks the deck against owners every step of the way. With no assurance that such a heavy investment of time and resources will pay off, it should come as little surprise that few owners even try to mount a challenge.

### *Easiest Forfeiture Procedures Predominate*

Both civil and criminal forfeiture generally offer the same financial incentives to seize property—that is to say, the share of proceeds that law enforcement can keep is generally the same. But civil forfeiture is considerably easier for the government. There is typically no need to convict or even charge anyone, owners have limited due process rights, and standards of proof are generally low (see “Civil Forfeiture Laws Fail to Protect Property Owners” on p. 31).

At the federal level and in more than a dozen states and D.C., there is an easier process still—administrative forfeiture.<sup>76</sup> With administrative forfeiture, the government need not take even the modest first step of filing a forfeiture complaint laying out its case in court. Instead, the seizing agency or prosecutor need only send notice to owners informing them of (1) the government’s intent to forfeit their property administratively and (2) the statutory time window (which can be as short as 20 days<sup>77</sup>) during which they can ask the court to get involved. If no one files a claim, the property is automatically forfeited.<sup>78</sup>

However, even if an owner makes a claim, they still may not get their day in court. Federal law and some state laws give government attorneys the power to decide whether the claim can proceed to court. This can trip up innocent property owners like Terry and Ria Platt (see “Prosecutors Use Dirty Tricks to Make Sure Forfeiture Sticks” on p. 29).

And in fact, at the federal level, DOJ data indicate that between 1997 and 2015, one-fifth of all claims filed for seized property—and more than one-third of claims filed for seized cash—were deemed deficient by the seizing agency. The data suggest federal agencies reject claims largely for technical reasons, most commonly

(68%) because they were not “executed and sworn to by the claimant.” This simply means the claimant failed to include a paragraph swearing under penalty of perjury that the statements in the claim were true. Deficiencies like these can prevent owners from ever making it to court, even if they are innocent and intend to fight the forfeiture.

Worse, some federal agencies just sweep owners’ claims under the rug. By policy, U.S. Department of Homeland Security agencies, which participate in Treasury’s forfeiture program, must forward claims to a U.S. Attorney’s Office. The USAO is then supposed to decide whether to pursue judicial forfeiture or return seized property. Instead, according to a 2020 DHS Office of Inspector General report, U.S. Customs and Border Protection routinely refrained from sending claims to a USAO while it pressured property owners into settling. CBP did this in seven of the 11 cases with claims that the OIG sampled. The OIG concluded: “By negotiating settlements in cases where a USAO declines the case referral or in cases that were not referred to a USAO, CBP may be taking a portion of property from innocent property owners.”<sup>79</sup>

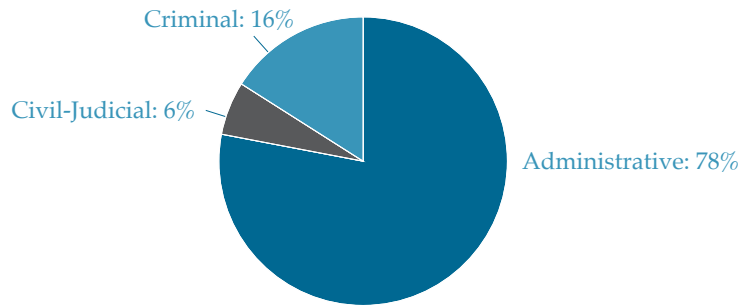
Although the government often decides whether to pursue forfeiture administratively or take a forfeiture case to court, owners have some say in which process is used in some jurisdictions. For example, in Iowa, Kansas and Louisiana, owners can file a petition with government attorneys asking them to review their cases and declare their property exempt from forfeiture because they are innocent owners.<sup>80</sup> Similarly, in Arizona, Hawaii and Rhode Island and at the federal level, owners can file a petition for remission or mitigation with government attorneys or prosecutors, asking the government (not a court) to release their property because they are innocent owners or due to extenuating circumstances.<sup>81</sup>

Many innocent owners choose this option because they believe that if they have the chance to speak their piece they can get their property back fast. Others may not fully grasp the difference between administrative and judicial procedures. Some owners may suspect they would lose in court but, facing a difficult financial situation, hope the government agrees that forfeiting their property would impose an undue hardship. Others choose administrative forfeiture for financial reasons, because they cannot afford to hire an attorney to represent them in court or to pay the cash bond required in some jurisdictions. These bonds can run into the thousands of dollars.<sup>82</sup> And still others may fear having to pay the government’s attorney fees if they lose at trial.<sup>83</sup> Regardless of the reason, by opting for administrative procedures, owners may foreclose any possibility of arguing their cases before an impartial judge.<sup>84</sup>

## Federal Forfeitures by Type

Federal data confirm most forfeitures at the federal level are civil. According to data from DOJ, only 16% of its forfeitures were processed criminally between 2000 and 2019. Civil forfeitures with at least some judicial involvement made up another 6% of DOJ forfeitures, meaning more than three-quarters of all DOJ forfeitures were processed administratively (see Figure 7). Put differently, of the 84% of DOJ forfeitures that were civil, 93% were processed administratively.<sup>85</sup>

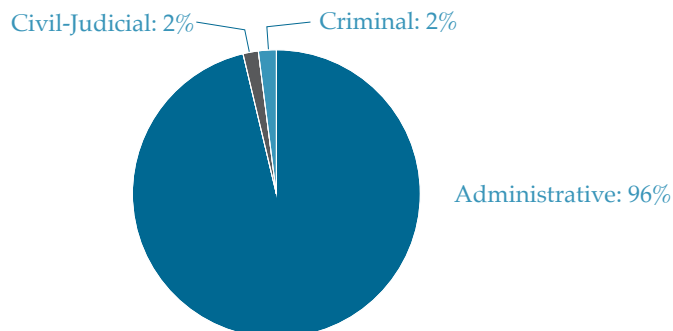
**Figure 7: DOJ Forfeitures,  
Criminal vs. Civil-Judicial vs. Administrative, 2000–2019**



Source: Authors' calculations based on DOJ's Consolidated Asset Tracking System, updated April 3, 2020, <https://www.justice.gov/afp/freedom-information-act>

Treasury's forfeiture program uses civil and administrative procedures even more heavily (see Figure 8). Between 2000 and 2016, the most recent year for which we have data, just 2% of Treasury forfeiture cases were processed criminally. Another 2% were civil-judicial forfeitures. A full 96% were processed administratively. This is after excluding cases involving counterfeit and other prohibited goods (as well as all summary contraband forfeitures), which are less likely to be contested and thus more likely to end in forfeiture by default. This is noteworthy because many forfeitures captured in Treasury data occur in the customs context and therefore involve these types of goods. Excluding them ensures we are not overestimating the percentage of administrative forfeitures. In its own analysis, DHS's OIG found 98.6% of forfeitures conducted by CBP and other DHS agencies were processed administratively.<sup>86</sup>

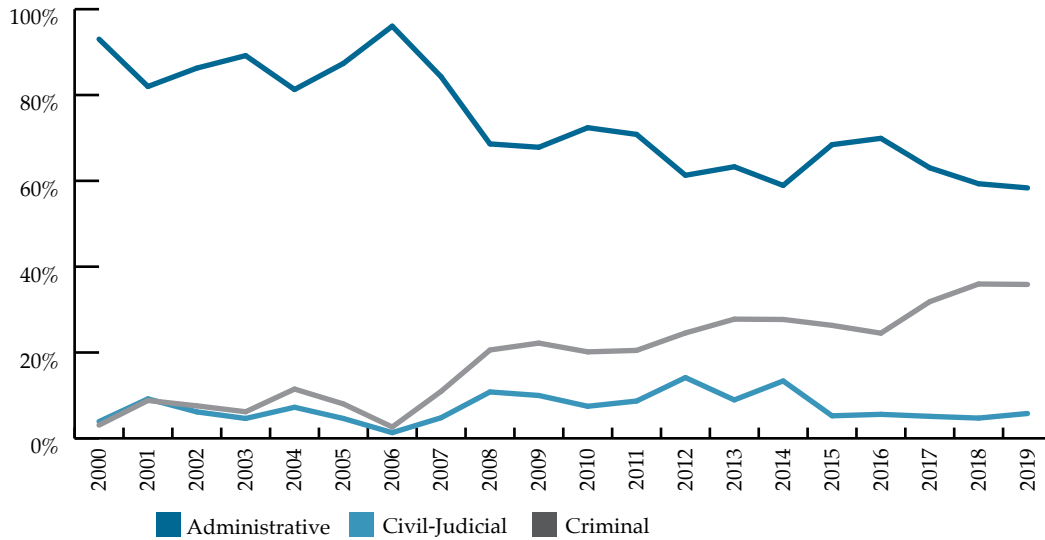
**Figure 8: Treasury Forfeitures,  
Criminal vs. Civil-Judicial vs. Administrative, 2000–2016**



Source: Authors' calculations based on Treasury's Seized Assets and Case Tracking System. IJ obtained these data in 2019 through litigation under the Freedom of Information Act and has put them online for public access: <https://ij.org/wp-content/uploads/2020/07/Data-for-Web.zip>

While the pattern of Treasury’s forfeiture proceedings has largely remained constant over time, the pattern of DOJ’s has not. As a share of DOJ forfeitures, administrative forfeiture has been declining over time, while criminal forfeiture has been on the rise (see Figure 9).

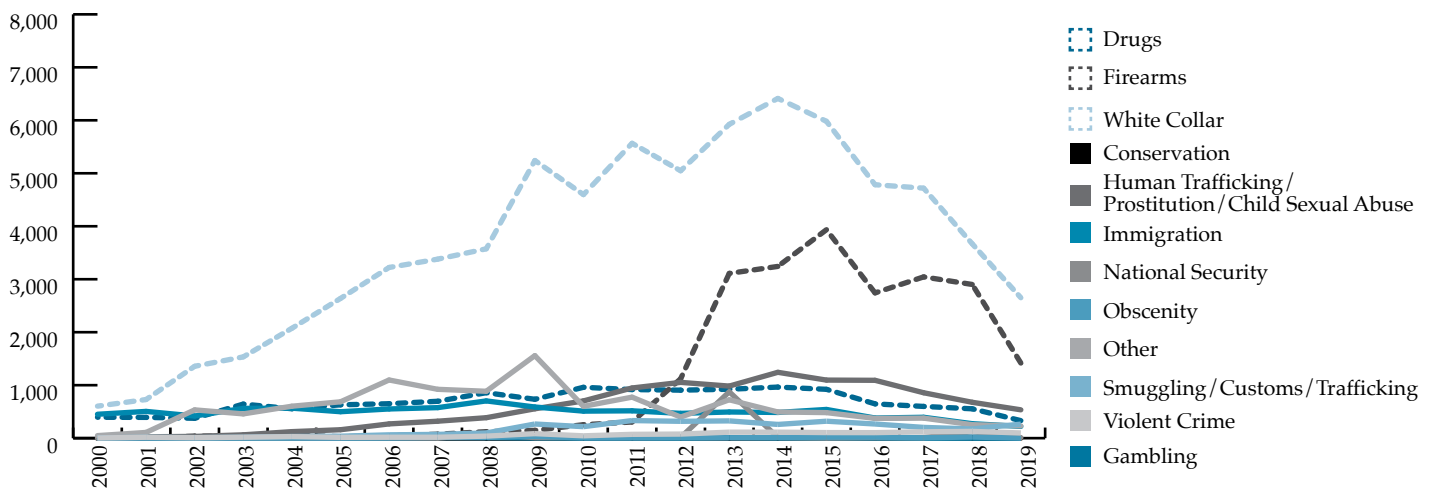
**Figure 9: All DOJ Forfeitures by Proceeding Type, 2000–2019**



Source: Authors’ calculations based on DOJ’s Consolidated Asset Tracking System, updated April 3, 2020, <https://www.justice.gov/afp/freedom-information-act>

One possible explanation for this trend is that DOJ’s policing priorities related to forfeiture may have shifted over time. Forfeiture data suggest DOJ’s attention may be moving away from drug crimes, which have historically accounted for a considerable portion of civil and administrative forfeitures, and toward firearms offenses and white-collar crimes like money laundering, Ponzi schemes and other financial fraud. Such crimes may be more likely to involve criminal prosecutions and convictions. As Figure 10 illustrates, DOJ criminal forfeitures for drug crimes have remained relatively steady over the past two decades, though they have decreased somewhat in recent years. Meanwhile, criminal forfeitures for firearms and especially white-collar crimes have ballooned, though they have begun to decline in recent years.

**Figure 10: Number of DOJ Criminal Forfeitures by Offense Type, 2000–2019**

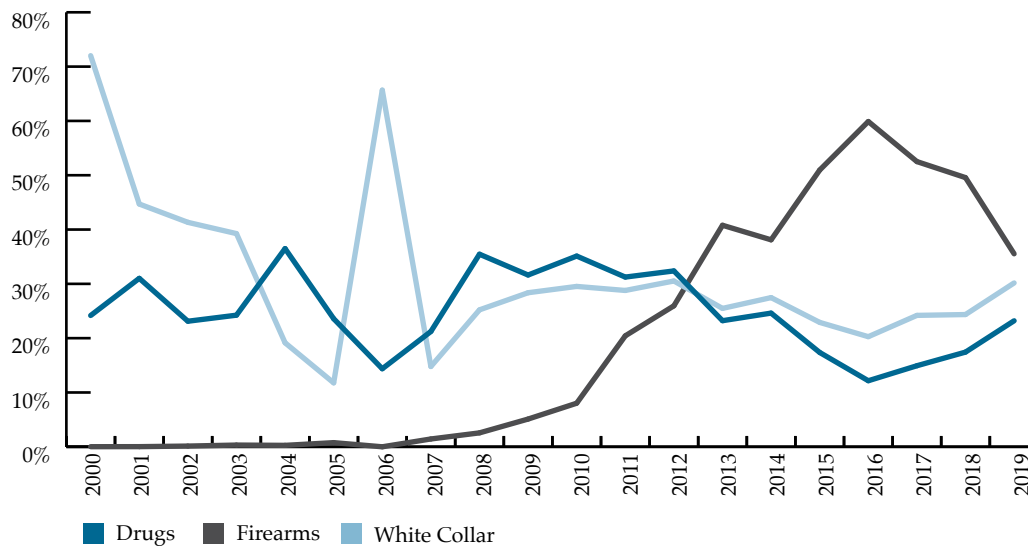


Source: Authors’ calculations based on DOJ’s Consolidated Asset Tracking System, updated April 3, 2020, <https://www.justice.gov/afp/freedom-information-act>

White-collar and firearms crimes have also accounted for larger shares of all DOJ forfeitures than drug crimes over the past decade (see Figure 11). The increase in white-collar forfeitures may owe, at least in part, to the fight against terrorism and specifically the fight to cut off terrorist financing. This focus has likely led to greater scrutiny of potential money laundering and other financial crimes—activities that are commonly used to fund terrorist organizations.<sup>87</sup> Another possible explanation is that technological innovations have made white-collar crimes easier to perpetrate and consequently increasingly common to prosecute.<sup>88</sup> The increase in firearms forfeitures likely reflects, at least in part, the Obama administration’s focus on gun violence.<sup>89</sup> These trends add weight to the theory that federal policing priorities may have some effect on forfeiture proceedings.<sup>90</sup>

Despite declines on the DOJ side, administrative forfeitures still account for most federal forfeitures. Administrative forfeiture is likely so common because it is, in the federal context, the default procedure when no one triggers judicial involvement by filing a claim for seized property.

**Figure 11: Most Common Offenses Leading to DOJ Forfeitures, All DOJ Forfeitures, 2000–2019**

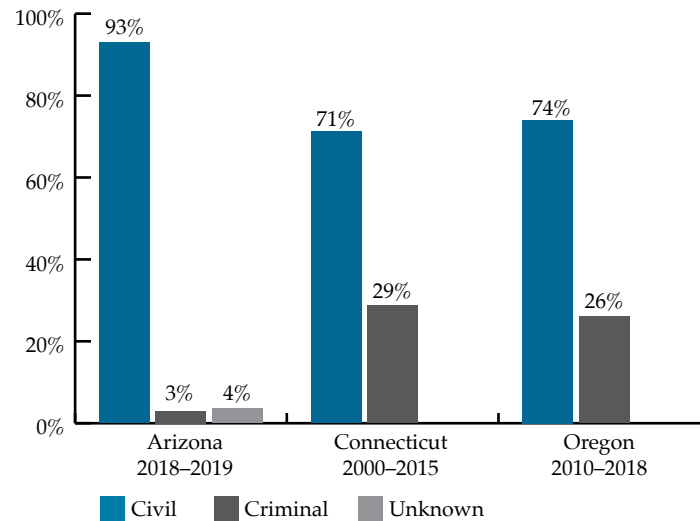


Source: Authors’ calculations based on DOJ’s Consolidated Asset Tracking System, updated April 3, 2020, <https://www.justice.gov/aip/freedom-information-act>.

### State Forfeitures by Type

Few states collect data on forfeiture types, and no state collects reliable data on all types of proceedings—criminal versus civil and judicial versus administrative. But data from five states paint a grim picture of forfeiture proceedings in the states. In the three states that track criminal versus civil, civil forfeiture predominates, just as it does at the federal level. Figure 12 shows Arizona, Connecticut and Oregon overwhelmingly use civil forfeiture instead of criminal.

**Figure 12: Properties Forfeited Under Criminal vs. Civil Procedures, Three States**



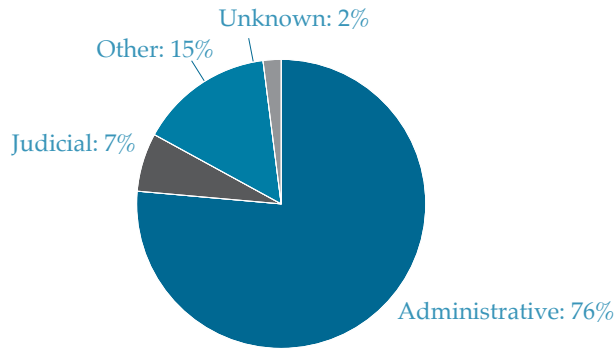
Source: See data notes in State Profiles for source details.

Changes in Connecticut’s reporting do not allow reliable use of its data after mid-2016, but criminal forfeiture cases began to outnumber civil beginning in 2013. This trend did not emerge out of concern for citizens’ due process rights, however. Rather, 2012 staffing cuts in the Connecticut Attorney General’s Office meant the state could no longer litigate civil forfeitures on behalf of local governments. As a result, local courts found it easier to couple most forfeitures with criminal cases rather than prosecute property in separate civil proceedings.<sup>91</sup> Thanks to a 2017 reform, Connecticut now requires a conviction in most forfeiture cases.<sup>92</sup>

Turning to judicial versus administrative forfeiture at the state level, only Minnesota tracks this information statewide. Data from the state indicate that Minnesota prosecutors, like federal ones, typically use administrative forfeiture, initiating cases judicially for only 7% of forfeited properties (see Figure 13). Administrative forfeiture is available in DWI and drug-related cases involving property worth up to \$50,000. In such cases, the burden is on the property owner to initiate judicial proceedings by filing a complaint in court within 60 days of receiving notice of the seizure.<sup>93</sup> In all other cases, the prosecutor must file a complaint in court to initiate forfeiture proceedings and the property owner has 30 days to answer. If for whatever reason an owner does not act, whether by filing a complaint asking for judicial forfeiture or by responding to the prosecutor’s complaint, the property is forfeited automatically.



**Figure 13: Minnesota Forfeited Properties, Judicial vs. Administrative 2010–2018**



Note: Data cover how cases were initiated. “Other” includes settlements and agreements outside the forfeiture process. Data are from the Minnesota State Auditor.

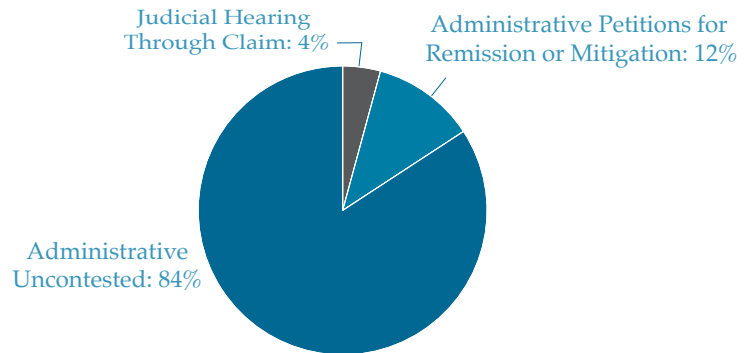
Hawaii also makes administrative forfeiture data publicly available, though not data about forfeitures initially filed judicially. So while we cannot determine how many cases are initiated judicially versus administratively, we can take a closer look at the cases initiated and resolved by the state as administrative forfeitures. Between 2001 and 2018, there were 3,903 such cases, averaging 217 annually.<sup>94</sup>

In Hawaii, prosecutors initiate administrative forfeitures of personal property worth up to \$100,000 and vehicles regardless of value (but not real property) by filing a petition with the Hawaii Attorney General and providing owners notice. Owners can then file a petition for remission or mitigation, file a claim seeking judicial review, or do nothing and let the state forfeit the property. Owners must choose either a petition or claim; they cannot file both.<sup>95</sup> Owners who opt to submit a petition avoid paying the onerous cash bond required to

file a claim for judicial review, as well as the other costs of going to court, but they also give up their right to a hearing before a neutral arbiter.<sup>96</sup>

If an owner files a claim and it is not rejected as deficient,<sup>97</sup> prosecutors must either take the case to court or return the property to the owner.<sup>98</sup> As shown in Figure 14, data from the state indicate that just 4% of forfeitures initiated administratively were resolved by courts. In the remaining cases to which owners responded, the final decision to forfeit lay with the AG, with owners filing petitions for remission or mitigation in only 12% of cases. In 84% of cases, owners took no action, and their property was automatically forfeited.

**Figure 14: Hawaii Administrative Forfeiture Cases, 2001–2018**



Note: Data cover all forfeiture cases initiated administratively by prosecutors. These cases include those that went uncontested, those where owners requested remission or mitigation, and those where owners requested a judicial hearing. The data include only completed cases but do not identify the dispositions of the cases involving a claim for judicial review and petition for remission or mitigation. However, the 84% of uncontested cases ended in automatic forfeiture. Data are from annual reports obtained from the Hawaii Attorney General’s website.

## Prosecutors Use Dirty Tricks to Make Sure Forfeiture Sticks

Even when property owners are determined to fight back against forfeiture, the government is adept at finding ways to try to make sure they lose anyway. Just ask Terry and Ria Platt of Prosser, Washington. In 2016, the couple loaned their son their Volkswagen Jetta. While driving through Navajo County, Arizona, he was pulled over for a window tint violation. During the stop, police found a personal use quantity of marijuana and \$32,000 cash. Police arrested him and seized contraband, cash and car.<sup>1</sup>

Neither the drugs nor the cash was enough to justify forfeiting the car under Arizona law. And there was no suggestion the Platts had done anything wrong. Nevertheless, Navajo County sent them notice

it was keeping their car and they had just 30 days to object.<sup>2</sup>

An attorney told the Platts fighting back would cost \$4,000 and they would likely lose.<sup>3</sup> Worse, Arizona had a “reverse” attorney fee provision, since repealed, making property owners responsible for 100% of the government’s attorney fees if they lost.<sup>4</sup>

Unbowed, the Platts responded to the highly complex and confusing notice and filed a petition seeking their property’s return—and they did it on time.<sup>5</sup>

Even so, county prosecutors told a court the forfeiture was “uncontested,” supposedly because

the Platts had not used the words “under penalty of perjury” in their petition. Instead of giving the Platts an opportunity to correct this technical deficiency, the prosecutors put their case into a legal bucket where forfeiture is practically automatic.<sup>6</sup>

“Uncontested forfeiture” is an administrative process the government can use to forfeit property more or less by default. The name implies it is used

when no one contests a forfeiture, but this is not necessarily the case. In Arizona, contested forfeitures like the Platts’—which should go to trial—can also end up in the uncontested bucket.

That’s because Arizona law provides no check on prosecutors who unilaterally withhold a property owner’s petition from a court, which they

have every incentive to do because their offices profit from forfeiture. If a prosecutor tells the court no one contested the forfeiture, the court must rubber stamp their application for forfeiture, thus depriving owners like the Platts of their property and their day in court.<sup>7</sup>

The Platts eventually got their car back, but only after IJ filed a civil rights lawsuit on their behalf.<sup>8</sup> Despite this win, the suit continues. Its goal is nothing less than to dismantle Arizona’s uncontested forfeiture scheme, leaving prosecutors with one less dirty trick they can use to make forfeiture stick.



Ria and Terry Platt nearly lost their car forever despite being innocent.

1 First Amended Complaint, *Platt v. Moore*, No. CV-18-8262-PCT-BSB (D. Ariz. Dec. 21, 2016), ECF No. 20; Ryals, M. (2016, Oct. 20). ‘Null and void.’ *Inlander*. <https://www.inlander.com/spokane/null-and-void/Content?oid=2925843>

2 First Amended Complaint, *Platt*, *supra* note 1.

3 Institute for Justice. (n.d.). Arizona forfeiture [Backgrounder]. Arlington, VA. <https://ij.org/case/arizona-forfeiture/>

4 First Amended Complaint, *Platt*, *supra* note 1; H.B. 2477, 53rd Leg., Reg. Sess. (Ariz. 2017); see also Sibilla, N. (2017, Apr. 12). With governor’s signature, Arizona now the 20th state to pass forfeiture reform [Press release]. Arlington, VA: Institute for Justice. <https://ij.org/press-release/governors-signature-arizona-now-20th-state-pass-forfeiture-reform/>

5 First Amended Complaint, *Platt*, *supra* note 1.

6 First Amended Complaint, *Platt*, *supra* note 1.

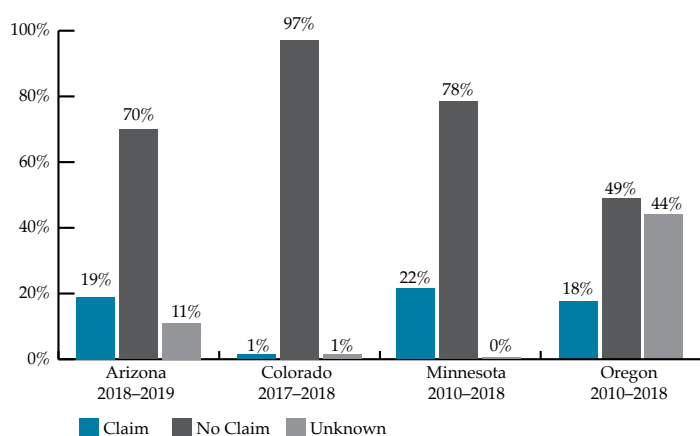
7 First Amended Complaint, *Platt*, *supra* note 1.

8 Institute for Justice. (2016, Oct. 27). Arizona forfeiture victims get their car back [Press release]. Phoenix, AZ. <https://ij.org/press-release/arizona-forfeiture-victims-get-car-back/>; Decl. of Partial Remission and Withdrawal of Motion to Strike, *In re: U.S. Currency \$31,780; 2012 Volkswagen Jetta, VIN 3VW3L7AJ0CM366141*, No. CV 201600217 (Ariz. Super. Ct., Navajo Cnty., Oct. 19, 2016).

## Owners Rarely Fight Back

Many forfeitures are processed administratively or end in default judgments because no one fights back. According to available data, relatively few property owners contest forfeiture. Figure 15 shows average claim rates in the four states that track whether anyone filed a claim for return of seized property. Not all these states track this information consistently, and they all track it slightly differently.<sup>99</sup> Nevertheless, the overall takeaway is that owners rarely fight back.

**Figure 15: Average Annual Claim Rates, Four States**



Note: Minnesota data are from the Minnesota State Auditor’s annual forfeiture reports. For details of the other states’ sources, see data notes in State Profiles.

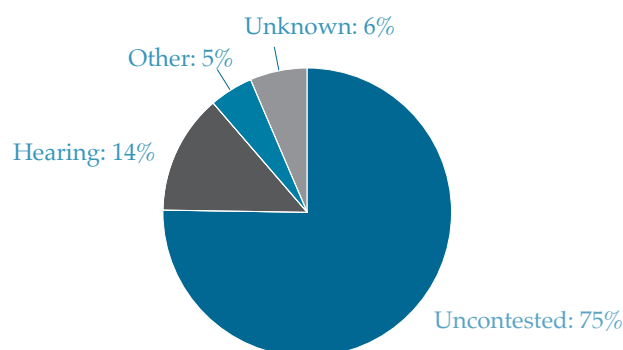
Arizona, Minnesota and Oregon, in most cases, require property owners or other interested parties to proactively file a claim for return of property. In Minnesota, the state with the highest claim rate, owners seek the return of their property only 22% of the time. However, the state’s data cover only forfeitures related to drug and DWI offenses and exclude properties where it was unknown whether anyone filed a claim.

In Arizona, owners challenge forfeiture in only 19% of cases, using either judicial or administrative processes. This includes both claims seeking judicial review and claims in “uncontested forfeiture” cases, where prosecutors, not an impartial judge, decide whether forfeiture is justified.<sup>100</sup> (See “Prosecutors Use Dirty Tricks to Make Sure Forfeiture Sticks” on p. 29.) The claim rate in Oregon is approximately 18%, though the state tracks only some questions related to claims, and we could not infer claim rates for nearly half the properties.

In Colorado, property owners must respond to the state’s forfeiture complaint filed in court by filing their own counterclaim. Only 1% of forfeitures are contested in the state.

Somewhat different data from Tennessee also indicate owners rarely fight forfeiture. Tennessee is unique in that it processes forfeitures via an administrative hearing procedure, where an administrative law judge—that is, a judge who is a member of the executive branch, not an independent member of the judiciary—decides whether the state can forfeit the property. Three-quarters of Tennessee’s currency forfeitures were not contested, meaning the owner did not request an administrative hearing and instead walked away (see Figure 16). Just 14% of owners contested forfeiture of their currency, requesting an administrative hearing. If contesting owners receive an adverse administrative ruling, Tennessee allows them to request judicial review by a court. However, our hearing data do not detail how many owners availed themselves of this appeal option.

**Figure 16: Tennessee Currency Forfeitures, 2017–2018**



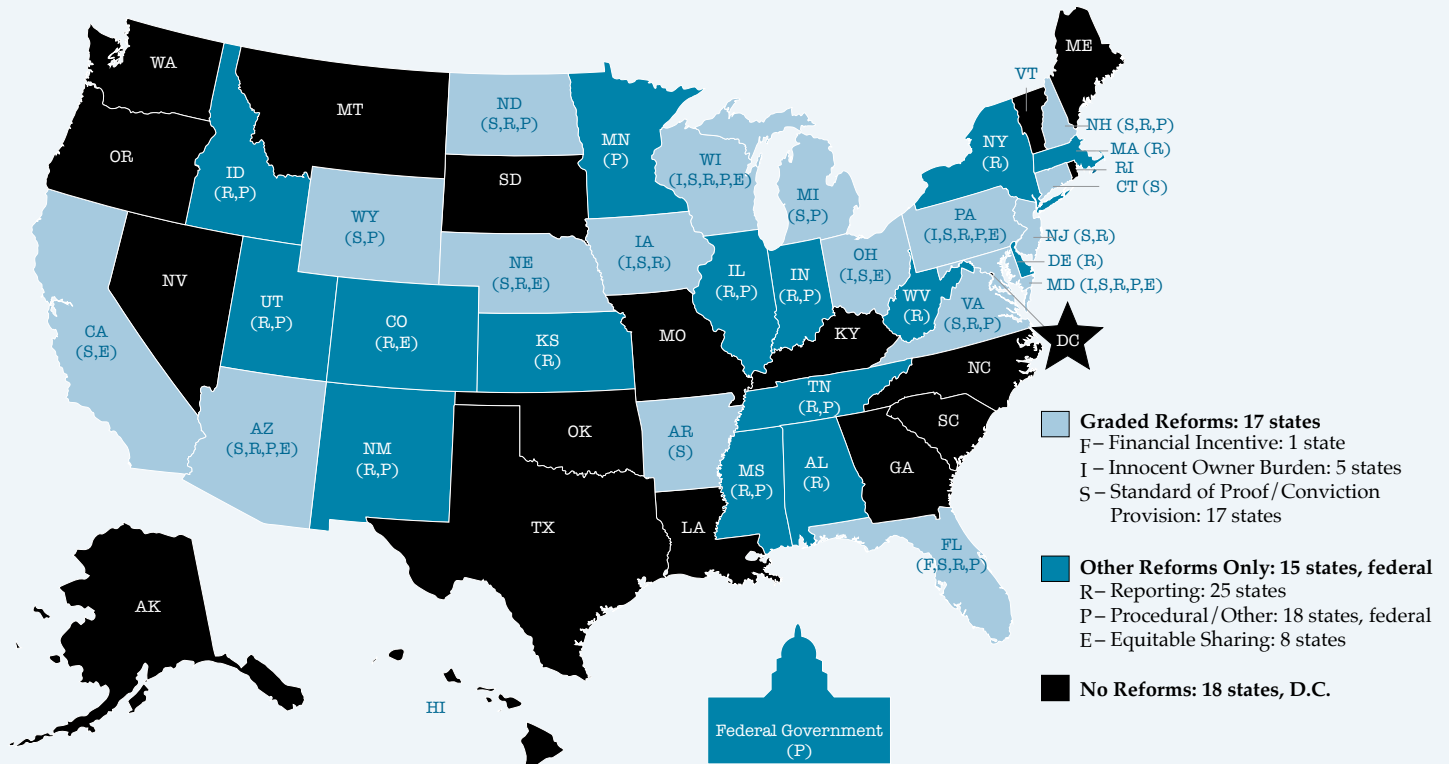
Source: Tennessee Department of Safety and Homeland Security.

Proponents argue property owners rarely fight forfeiture because “[m]ost cases are indisputable.”<sup>101</sup> While that reasoning may explain *some* uncontested forfeitures, it is likely that the difficulty and expense of fighting forfeiture, paired with the low value of most forfeitures, deter many owners from fighting for return of their property. Without the right to legal counsel, to say nothing of other protections available in criminal proceedings, property owners must hire their own attorney or attempt to navigate the confusing civil forfeiture process, with its many procedural traps, on their own. When valuable property is at stake, an owner may decide fighting back is worth the headache. But when property is worth \$2,000 or less, as it most often is, owners may—quite understandably—decide fighting back is more trouble than it is worth. Failure to make a claim may be evidence less of guilt than of a rational choice to walk away.

# Civil Forfeiture Laws Fail to Protect Property Owners

As the public and lawmakers have increasingly recognized forfeiture's size, scope and potential for abuse, interest in reform is high. Since the second edition of *Policing for Profit*, 32 states and the federal government have adopted measures limiting forfeiture or altering its procedures. Figure 17 summarizes the types of reforms adopted since late 2015. See our State Profiles starting on p. 59 or online for details of recent reforms.

**Figure 17: Civil Forfeiture Reforms Since Late 2015**



Unfortunately, as the map illustrates, relatively few reforms have tackled the central problems with civil forfeiture laws graded by each edition of *Policing for Profit*: (1) law enforcement's financial stake in forfeiture efforts, (2) inadequate protections for innocent owners and (3) standards of proof well below the familiar "beyond a reasonable doubt" required for a criminal conviction. In the past five years, just one state has reduced (not eliminated) law enforcement's financial incentive for forfeiture and five states have improved innocent owner protections. Seventeen states have raised the standard of proof, added a conviction provision or both.

The most common reforms have increased transparency through improved reporting (25 states). Other reforms have added procedural protections or limits on forfeiture (18 states and Congress) or imposed new limits on local participation in federal equitable sharing (eight states). Though such reforms can be steps in the right direction, much work remains to be done.

To date, no state has matched the reform adopted by New Mexico in 2015.<sup>102</sup> With that reform, New Mexico addressed all three central problems with civil forfeiture: It abolished civil forfeiture, opting instead to rely on criminal forfeiture, and just as important, it directed all forfeiture proceeds—including those from other jurisdictions, such as federal equitable sharing proceeds—to the state's general fund rather than law enforcement coffers. It also strengthened protections for innocent owners whose property may be caught up in forfeiture proceedings. And, in denying proceeds to state and local agencies, it removed any incentive for law enforcement to circumvent the new state law through federal equitable sharing.<sup>103</sup>

New research indicates New Mexico's best-in-the-nation reforms have come without any cost to public safety (see "New Research: Eliminating Civil Forfeiture Does Not Increase Crime" on p. 32). Contrary to claims that abolishing civil forfeiture would worsen crime, an analysis comparing crime rates in New Mexico with those in neighboring states finds no evidence of any negative effect from New Mexico's reform. These findings suggest other states have little to fear and much to gain from following in New Mexico's footsteps.

# New Research: Eliminating Civil Forfeiture Does Not Increase Crime

In 2015, the New Mexico Legislature overhauled the state's forfeiture laws, passing the nation's strongest reform package. Police and prosecutors warned public safety would be compromised and urged the governor to veto the bill, saying it would "take money out of (law enforcement agencies') hands" and "[y]ou'll get less law enforcement."<sup>1</sup> But new research suggests eliminating civil forfeiture did not lead to an increase in crime.

As of July 1, 2015, New Mexico prohibits civil forfeiture, directs all forfeiture proceeds to the state general fund and prevents law enforcement agencies from transferring property worth less than \$50,000 to the federal government for forfeiture under the equitable sharing program.<sup>2</sup> Previously, law enforcement in the state had been allowed to keep 100% of forfeiture proceeds.

Now that the reform has been in effect for several years, IJ has put law enforcement's claims to the test. We compared New Mexico's monthly crime rates to those in neighboring Colorado and Texas before and after reform.<sup>3</sup> We detected no significant increase in crime rates that could be attributed to the reforms, indicating the reforms had no negative effect on public safety—and strongly suggesting civil forfeiture is not an essential crime-fighting tool.

## Analysis

To test forfeiture proponents' claims, we conducted multiple analyses to give us the best possible chance of detecting any relationship between state forfeiture laws and crime. First, we compared the average change in crime rates in the two years before and after reform, called a difference-in-differences analysis.<sup>4</sup> We then examined the change in crime rates during each month in the periods before and after reform, called an interrupted time series analysis.<sup>5</sup>

For each analysis, we used five different measures of crime. Data are from the FBI's Uniform Crime Reporting Program and include total offenses (the total number of crimes committed) as well as four measures of arrests—all arrests, arrests for driving under the influence of alcohol or drugs, drug possession arrests, and drug sales arrests—which quantify how many crimes police "clear," or solve, by arresting someone.<sup>6</sup> If forfeiture proponents' arguments held true, we would expect to see two things: (1) a significant increase in the number of crimes committed because forfeiture is no longer deterring crime and (2) a significant decrease in the number of arrests because police are less able to solve crimes without forfeiture.

We compared counties in New Mexico to those in Colorado and Texas to control for general changes in crime rates that are not related to forfeiture reform. These states are ideal controls because they border New Mexico and did not reform their forfeiture laws during the study period.<sup>7</sup> To allow enough time for any effects of the 2015 reform to manifest, we studied more than two years of post-reform monthly crime data.<sup>8</sup> We also controlled for other factors commonly acknowledged to impact crime rates, such as population, unemployment and number of sworn police officers. Finally, we also conducted analyses limited to just counties on either side of the state border to determine whether any effect is detected among neighboring counties.

## Results

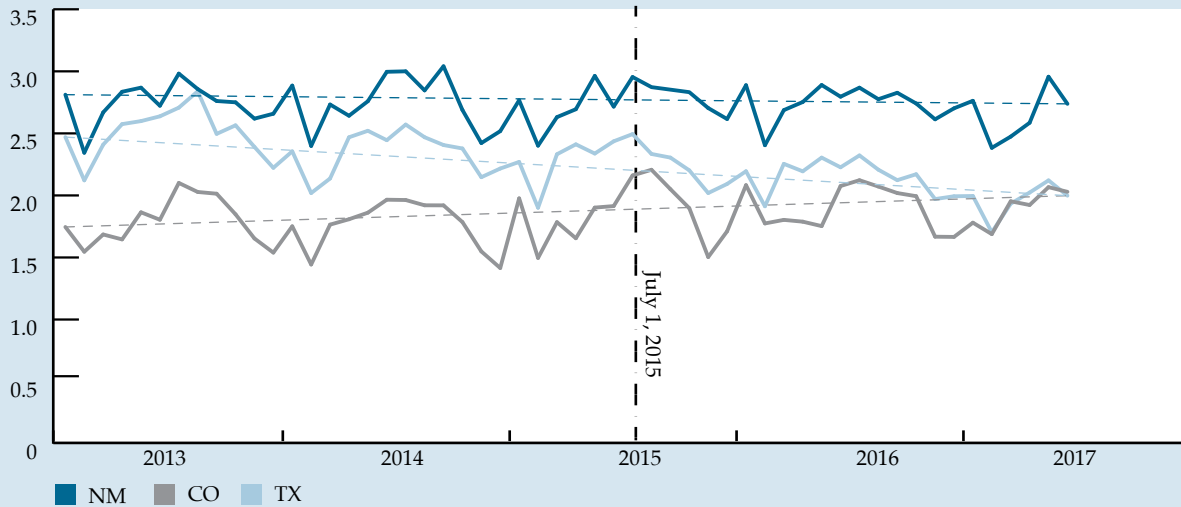
Compared to Colorado and Texas, New Mexico's overall crime rate did not rise following the implementation of strong forfeiture reform in 2015, nor did arrest rates drop. These findings are contrary to forfeiture proponents' predictions. Rather, New Mexico's trends across all five of our crime measures remained consistent with those of its neighboring states with one small exception. In one model examining

- 1 Dewan, S. (2015, Apr. 9). Bill to end civil forfeiture in New Mexico awaits move by Governor Martinez. *The New York Times*. <https://www.nytimes.com/2015/04/10/us/civil-forfeiture-new-mexico-bill-governor-martinez.html>; Boetel, R., & Boyd, D. (2015, Mar. 28). Bill would kill 'policing for profit'. *Albuquerque Journal*. <https://www.abqjournal.com/561411/bill-on-seizures-would-kill-policing-for-profit.html>
- 2 H.B. 560, 2015 Leg. (N.M. 2015). Despite the passage of HB 560, major cities continued their municipal DWI vehicle forfeiture programs until courts held the reform preempted them. *Espinoza v. City of Albuquerque*, 2019-NMCA-014, ¶ 1, 435 P.3d 1270, 1272 (holding that H.B. 560 preempted the Albuquerque municipal program pursuant to the reasoning articulated in an IJ amicus brief); *City of Santa Fe ex rel. Santa Fe Police Dep't v. One (1) 1989 Black Saab Sedan V.I.N. Y53AT76LXK7020541 New Mexico License No. 312TNC*, 2019-NMCA-028, 446 P.3d 1158, cert. denied (May 15, 2019) (invalidating Santa Fe's forfeiture ordinance on similar grounds). Our analysis therefore includes data from when municipalities were still forfeiting vehicles. However, because results are robust across all measures of crime, we do not believe this confounds the outcomes.
- 3 The study period ran from 2013 through 2017. See Appendix C for full regression results and a description of our methodology.
- 4 See, e.g., Stock, J. H., & Watson, M. M. (2012). *Introduction to econometrics* (3rd ed.). Harlow, United Kingdom: Pearson Education Limited.
- 5 See, e.g., Shadish, W. R., Cook, T. D., & Campbell, D.T. (2002) *Experimental and quasi-experimental designs for generalized causal inference*. Boston, MA: Houghton Mifflin.
- 6 We used UCR data cleaned and formatted by the Inter-university Consortium for Political and Social Research. For offense data, see Kaplan, J. (2020). Jacob Kaplan's Concatenated Files: Uniform Crime Reporting Program Data: Offenses Known and Clearances by Arrest, 1960–2019. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2020-02-19. <https://doi.org/10.3886/E100707V13>. For arrest data, see Kaplan, J. (2019). Jacob Kaplan's concatenated files: Uniform Crime Reporting (UCR) Program data: Arrests by age, sex, and race, 1974–2018. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2020-02-27. <https://doi.org/10.3886/E102263V9>
- 7 Colorado's law changed in July 2017, so analyses involving the state are limited to June 2017 and earlier. Texas saw no reforms during the study period, so we used the state as a control through December 2017. Arizona reformed its forfeiture law in early 2017, so we did not include it in any of our analyses.
- 8 For a discussion of why long time periods are necessary to gauge the true effects of a policy intervention, see Angrist, J. D., & Pischke, J.-S. (2008). *Mostly harmless econometrics: An empiricist's companion*. Princeton, NJ: Princeton University Press.

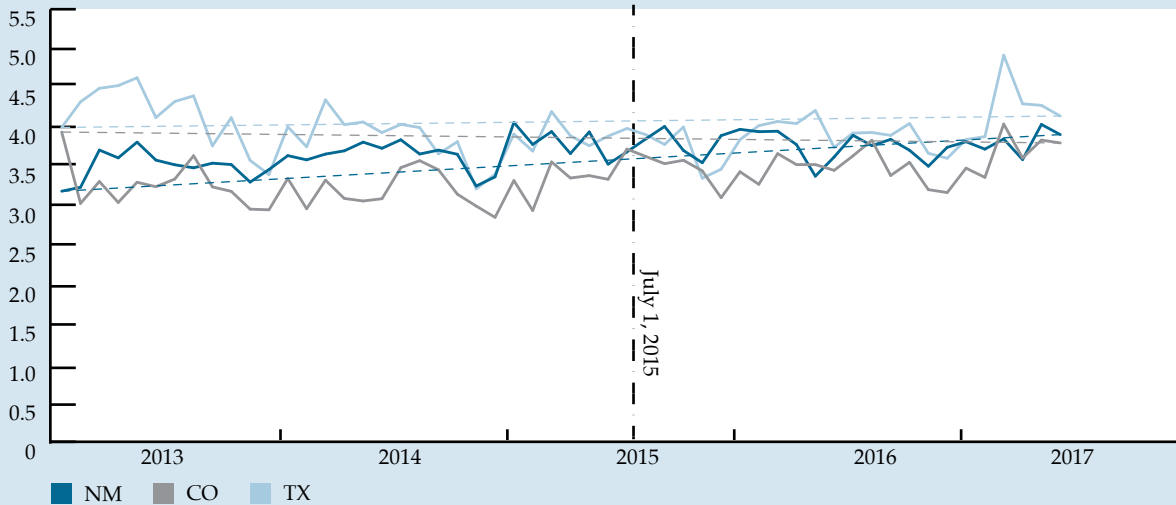
counties on state borders, New Mexico's arrest rate for selling drugs dropped slightly compared to Colorado's and Texas'. However, the practical effect is slight<sup>9</sup> and inconsistent with the findings across all other models and crime measures, suggesting it is mere statistical noise. See Appendix C for full regression results.

Figures A and B demonstrate that crime rates remained fairly consistent before and after reform. If the reform and crime rates bore a detectable relationship, we would expect to see a drastic upward slope in New Mexico's offense rate trend in Figure A, and a downward slope in its arrest rate trend in Figure B, immediately following the vertical line indicating the reform's effective date. Instead, although we observe the typical seasonal trends in crime rates,<sup>10</sup> the overall trend line for New Mexico's offense rate is nearly flat—even flatter than those for the control states. And its arrest rate trend line is very similar to those of the control states.

**Figure A: Monthly Offense Rates Per 1,000 Population, Jan. 1, 2013–June 30, 2017**



**Figure B: Monthly Arrest Rates Per 1,000 Population, Jan. 1, 2013–June 30, 2017**



These results call into question claims that forfeiture reform compromises public safety. Instead, it appears New Mexico law enforcement agencies can fulfill their mission without civil forfeiture and the funding it once generated. Our results suggest states can follow New Mexico's example and eliminate both civil forfeiture and the incentive to police for profit—without sacrificing public safety.

<sup>9</sup> About three fewer drug arrests per 1 million residents.

<sup>10</sup> See, e.g., McDowall, D., Loftin, C., & Pate, M. (2012). Seasonal cycles in crime, and their variability. *Journal of Quantitative Criminology*, 28(3), 389–410.

## 2020 Civil Forfeiture Law Grades

Civil forfeiture laws are typically complex and vary widely. While many provisions affect forfeiture procedures and property owners' rights, *Policing for Profit* grades state and federal laws only on three core elements: financial incentive, innocent owner protections and standard of proof. Not only do these elements reflect the central problems with civil forfeiture, but they also capture the incentives faced by law enforcement agencies engaged in forfeiture. In fact, research has linked these three elements with law enforcement behavior, finding forfeiture activity is influenced by both financial return and procedural ease.<sup>104</sup>

Where states have multiple statutes covering different types of crimes, this report assigns grades based on forfeiture laws for controlled substances as these have been the most common forfeitures historically. Appendix A provides greater detail on grading methods, and Appendix B provides citations, including for many non-controlled substances statutes.

### Financial Incentive

Under most state and federal forfeiture laws, most or all proceeds from forfeited property go to law enforcement coffers, often supplementing the budgets of the very agencies that seized the property and the prosecutors that secured its forfeiture. This arrangement risks biasing law enforcement priorities toward the pursuit of property over justice and enables agencies to self-fund outside normal legislative appropriations. Despite widespread concern over agencies' financial stake in forfeiture efforts, recent years have seen little genuine reform.

Critics' concerns are neatly captured by a 2018 ruling from a federal district court. The case involved a lucrative vehicle forfeiture program run by the city of Albuquerque—even after, and in defiance of, New Mexico's 2015 reforms. Under the program, the city police department's forfeiture unit seized cars from drivers suspected of DWI and pursued the cars through civil forfeiture, regardless of whether the driver owned the car. The program forfeited and auctioned thousands of cars, generating \$11.7 million between 2009 and 2016—money

used to fund the forfeiture unit itself without legislative oversight of spending.<sup>105</sup>

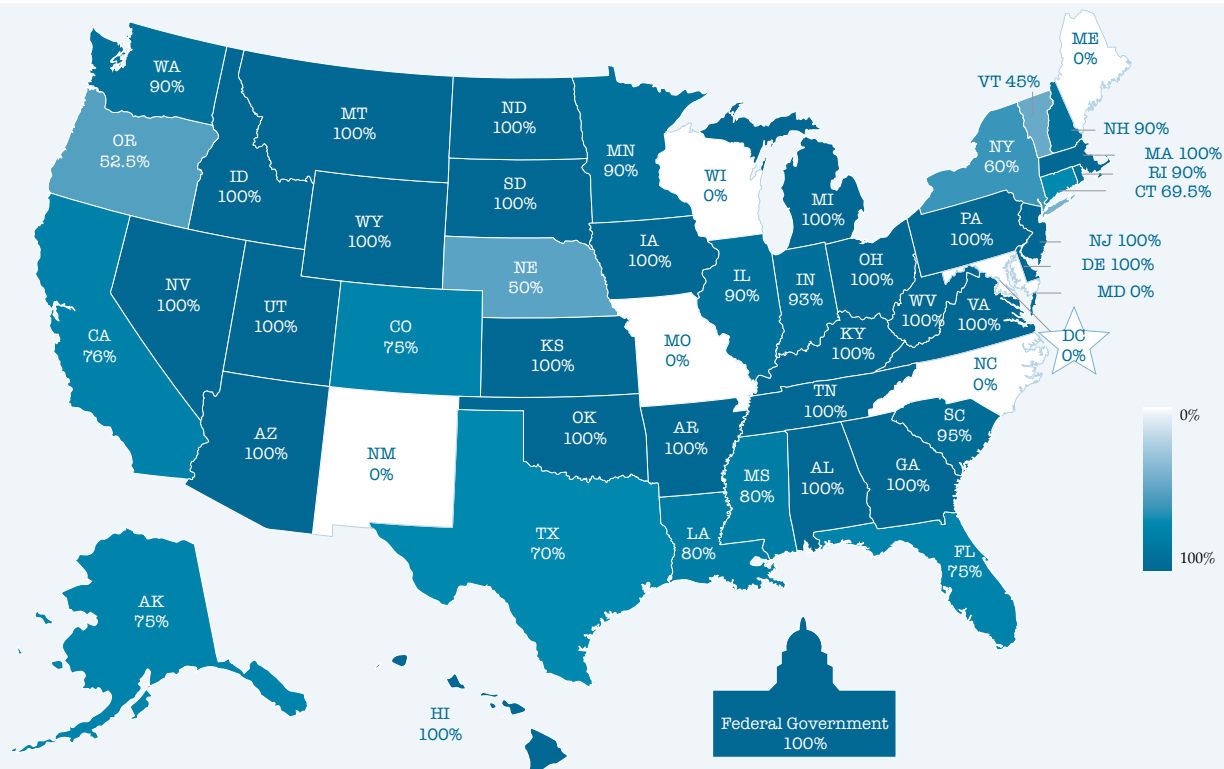
This, the federal district court held, violates the U.S. Constitution's guarantee of due process by encouraging law enforcement to pursue property instead of justice: "[T]he City of Albuquerque has an unconstitutional institutional incentive to prosecute forfeiture cases, because, in practice, the forfeiture program sets its own budget and can spend, without meaningful oversight, all of the excess funds it raises from previous years."<sup>106</sup> This creates a "realistic possibility that forfeiture officials' judgment will be distorted by the prospect of institutional gain" because "the more revenues they raise, the more revenues they can spend."<sup>107</sup>

In a similar example, under pressure from a class action lawsuit, the Philadelphia District Attorney's Office and Police Department recently agreed to end their long-standing practice of self-funding from forfeiture revenue.<sup>108</sup> The city's outsized forfeiture machine had once raked in \$5.6 million annually from thousands of often small-dollar forfeitures. On average, the program's revenue equaled nearly 20% of the DA's annual budget.<sup>109</sup>

Research suggests these examples are no aberrations. A 2019 study by Seattle University economist Brian Kelly examined thousands of law enforcement agencies participating in the federal equitable sharing program. The study found a strong and statistically significant link between weak economic conditions and property seizures.<sup>110</sup> The results indicate agencies seize more when budgets are tight, echoing earlier research finding financial incentives can influence law enforcement behavior.<sup>111</sup> Notably, the Kelly study examined both civil and criminal forfeitures, suggesting the financial incentive can distort priorities even under criminal forfeiture.<sup>112</sup>

Unfortunately, most state and federal forfeiture laws provide ample incentive to pursue property, as shown in Figure 18. In 32 states and at the federal level, between 80 and 100% of forfeiture proceeds go to funds controlled by law enforcement—and little has changed since the second edition of *Policing for Profit*. Only one state, Florida, modestly reduced the financial incentive, dropping law enforcement's share of proceeds from 85% to 75% as part of a larger reform package.<sup>113</sup>

Figure 18: Financial Incentives in Civil Forfeiture Laws



Meanwhile, two states moved in the opposite direction: Colorado and Indiana. In 2018, Colorado increased law enforcement’s financial incentive from 50% to as much as 75% through the creation of the Law Enforcement Community Services Grant Program, which is funded by 25% of forfeiture proceeds.<sup>114</sup> Also in 2018, Indiana increased its financial incentive through a legislative amendment (followed by a state Supreme Court ruling).<sup>115</sup> Before 2018, law enforcement agencies were permitted by statute to deduct a portion of forfeiture revenue for case-specific “law enforcement costs.”<sup>116</sup> Any surplus was supposed to be deposited in the state’s common school fund, per the state Constitution, which stipulates that “all forfeitures” be sent to the school fund.<sup>117</sup> In practice, however, little forfeiture revenue went to schools; instead, law enforcement agencies kept most of the proceeds for themselves.<sup>118</sup>

In 2016, forfeiture victims and taxpayers sued to stop that practice. They contended that both the practice and the statute allowing it violated the Indiana Constitution.<sup>119</sup> But in 2018, while the lawsuit was pending, the legislature doubled down, enacting a formula for distributing forfeiture proceeds.<sup>120</sup> Under the new statute, police, prosecutors and government-contracted contingency-fee lawyers can always keep the bulk of forfeiture revenue—up to 93%—for themselves. A majority of the Indiana Supreme Court upheld this law in 2019.<sup>121</sup> Previous editions of *Policing for Profit* credited Indiana forfeiture law as offering no financial incentive. However, given the state’s new law and the state Supreme Court’s ruling, this edition counts Indiana as having a 93% financial incentive.

Today, only six states<sup>122</sup> and D.C. bar law enforcement from using forfeiture proceeds.<sup>123</sup> Two of these jurisdictions, New Mexico and D.C., ended the financial incentive as part of comprehensive reforms in 2015 and 2014.<sup>124</sup> Others, such as Missouri and Wisconsin, have state constitutional provisions directing forfeiture proceeds to school funds.<sup>125</sup>



However, as in Indiana, these safeguards can be skirted. Wisconsin has long permitted law enforcement to retain up to 50% of revenue from forfeited property for “expenses.”<sup>126</sup> When reformers proposed sending all proceeds to the school fund, law enforcement interests expressed outrage. Said the Eau Claire County sheriff: “What is the money used for in the School fund? What advantage is there for the District Attorney or Law Enforcement to make any seizures that all the proceeds revert to another agency?”<sup>127</sup>

Underscoring the point, a fiscal impact statement declared, “Prosecutors indicated that the most significant fiscal impact would be on law enforcement agencies because agencies would have no financial incentive to seize property to support law enforcement activities.”<sup>128</sup> In the end, the expense loophole remained, and the Legislature merely insisted that agencies start documenting any expenditures from forfeiture revenues and verifying that they are legitimate expenses.<sup>129</sup>

Similarly, Maine law directs all forfeiture proceeds to the state’s general fund, absent specific written approval from an executive or judicial official.<sup>130</sup> Yet investigative reports by the *Maine Beacon* indicate almost no proceeds are, in fact, being deposited in the general fund.<sup>131</sup> IJ’s research suggests agencies almost always request special approval to keep proceeds, and officials largely rubber-stamp requests.

*Policing for Profit* grades states on their laws—not practices that may undermine them. As a result, law enforcement’s true financial stake in forfeiture may be even worse than the picture painted here.

### **Innocent Owner Protections**

Beyond giving law enforcement an improper financial incentive, forfeiture laws create another fundamental problem: They permit the government to forfeit property from people who are innocent of any wrongdoing but whose property is seized because *someone else* might have used it in an alleged crime. Worse, as this report’s grades document, under most civil forfeiture laws, such owners bear the burden of proving their own innocence to secure their property’s return, violating the basic rule that citizens are innocent until proven guilty.

This problem of third-party innocent owners is far from uncommon. Perhaps the most notorious U.S. Supreme Court case on forfeiture, 1996’s *Bennis*

*v. Michigan*, involved a wife whose family car was forfeited by Wayne County, Michigan, after her husband went behind her back to use the car while soliciting a prostitute.<sup>132</sup> The county’s forfeiture program continues to this day—and it is the same one that has swept up Stephanie Wilson and countless other innocent residents of Detroit and Wayne County in the meantime.<sup>133</sup> In 2017 alone, the county forfeited almost 400 cars without charging anyone with a crime.<sup>134</sup>

**“What advantage is there for the District Attorney or Law Enforcement to make any seizures that all the proceeds revert to another agency?”**

**—Wisconsin Sheriff**

Albuquerque’s now-defunct forfeiture program produced similar results. According to that city’s chief hearing officer, about half the cars seized belonged to someone other than the alleged offender, usually a parent, spouse, girlfriend or other loved one.<sup>135</sup>

Indeed, the innocent owner problem is baked into any forfeiture program.

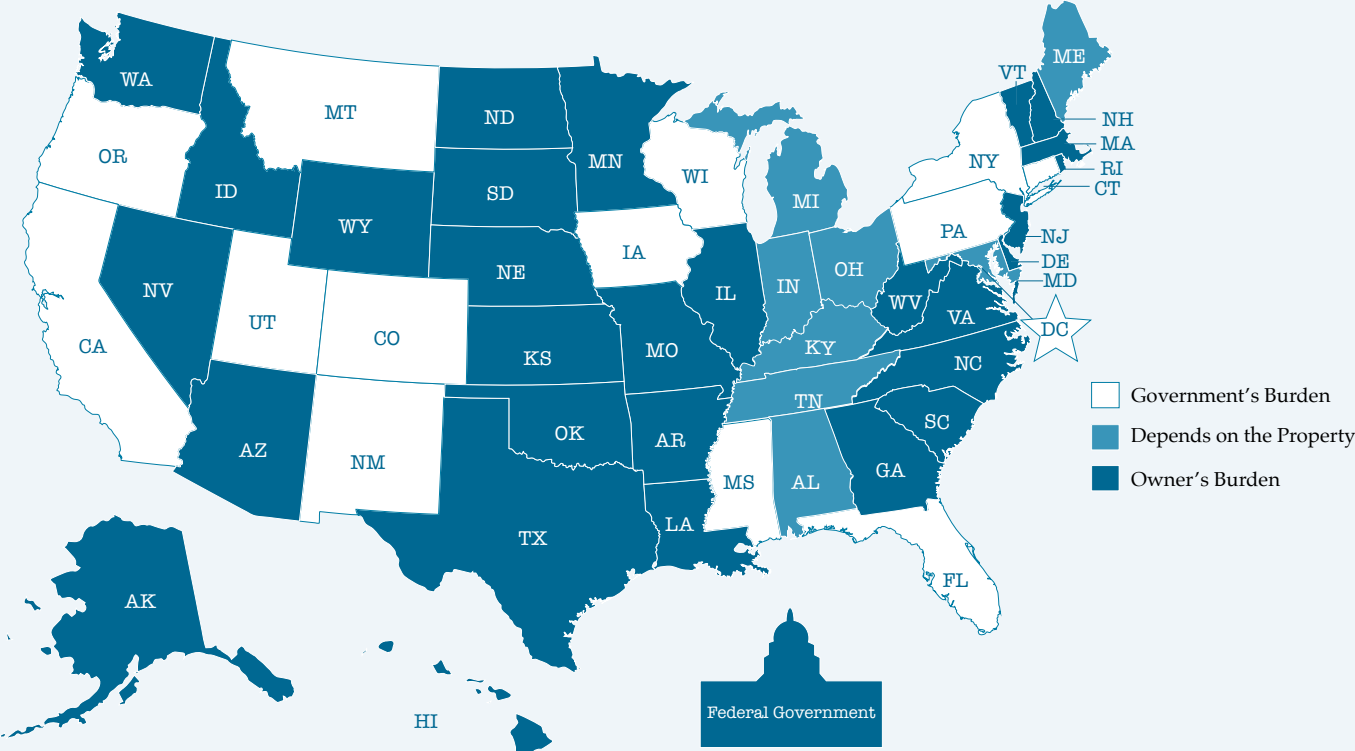
Because seizure requires only probable cause of the *property’s* connection to an alleged crime—and requires no proof of the *owner’s* involvement—innocent owners’ property will inevitably be seized. On paper, civil forfeiture laws generally provide a way for such owners to get their property back, often known as an “innocent owner defense.”<sup>136</sup> But these provisions are hardly watertight protections against unjust forfeiture. First, they often require owners to file legal papers shortly after the seizure—just 17 days in Wayne County<sup>137</sup> and 10 days in Albuquerque.<sup>138</sup> (Albuquerque also required a \$50 administrative fee.) If owners fail to file properly or on time, the property is usually forfeited automatically. If they do file properly and on time, owners can wait months for a hearing—and may, while they wait, face pressure from prosecutors to settle, perhaps by giving up part of the property or paying a fee to get it back<sup>139</sup> (see “Forfeiture Creates Pressure to Wheel and Deal or Walk Away” on p. 38).

Finally, if owners make it to court, they will confront the challenge graded by this report: To win their innocent owner claim, they will usually bear the bizarre burden of proving a negative—proving they neither knew about nor consented to the use of their property in the alleged crime.<sup>140</sup> This was how Albuquerque’s forfeiture program operated, and it is another reason the federal court struck it down. The city’s forfeiture ordinance, the court wrote, “violates due process by depriving car owners of their property unless they prove their innocence.”<sup>141</sup> The process created such a high risk that people would lose their property unjustly that the court declared it unconstitutional. In reaching this conclusion, the court

followed a recent U.S. Supreme Court ruling in a similar context affirming that people seeking the return of seized property are “entitled to be presumed innocent.”<sup>142</sup>

Nonetheless, as Figure 19 shows, in 29 states and under federal law, owners bear the burden of proving their own innocence to win seized property back. Just 13 states and D.C. place the burden of proof on the government. In the remaining eight states, the burden depends on the type of property at issue.

**Figure 19: Innocent Owner Burdens in Civil Forfeiture Laws**



Since the second edition of *Policing for Profit*, the situation for innocent owners has improved slightly. Three states—Iowa, Pennsylvania and Wisconsin—shifted the burden of proof from innocent owners to the government in all cases. Another two—Maryland and Ohio—did the same for some types of property. But overall, protections for innocent owners remain weak nationwide.

## Forfeiture Creates Pressure to Wheel and Deal or Walk Away

Forfeiture is so difficult to fight that property owners face enormous pressure to make a deal with the government or give up—even if they have done nothing wrong. And the government frequently uses hefty fees, stall tactics and other underhanded methods to turn up the heat. Melisa Ingram understands this only too well. Like Stephanie Wilson, mentioned in the introduction, Melisa had her car seized—twice—by Detroit police as part of Wayne County’s highly profitable vehicle forfeiture program.

In late 2018, Melisa loaned her car to her then-boyfriend so he could look for a job. Instead, he allegedly used it to pick up a prostitute, a claim he denied. Detroit police stopped Melisa’s boyfriend and seized her car without making any arrests. Officials told Melisa it would be at least four months before she could take her case before a judge. The only way to get her car back more quickly, they said, would be to pay a \$900 “redemption fee” plus towing and storage fees. Dependent on her car to get to work and school, Melisa paid \$1,355 in all. A few months later, after making it clear to her boyfriend that he was not to use her car for any illegal purpose, Melisa again loaned him her car, this time to attend a barbecue. As he was leaving the barbecue—alone—he was again stopped by police, who again seized the car without arresting him. This time, the redemption fee doubled to \$1,800, a sum Melisa simply could not pay. No amount of government pressure could coax payment from her empty wallet.<sup>1</sup>

Similar pressure to cough up cash or lose property forever featured in Albuquerque’s forfeiture program, which saw prosecutors squeeze Arlene Harjo and thousands of others to pay settlements for their vehicles’ return. Those same prosecutors received a cut of the program’s proceeds—that is, until a federal court found the program created an unconstitutional incentive to police for profit and struck it down.<sup>2</sup>

Philadelphia prosecutors engineered a similarly self-interested forfeiture scheme that placed undue pressure on owners to put up cash to secure release of their cars and other property—or to not fight at all. It joined with several property owners to file a class action lawsuit against Philadelphia,

winning damages and an agreement with the city to dismantle its forfeiture machine, which saw prosecutors—not judges—running proceedings.<sup>3</sup>

Pressure to settle or give up is also common at the federal level. After U.S. Customs and Border Protection seized Gerardo Serrano’s truck, he was presented with several options: abandon the truck, ask for an internal review of the seizure, request a judicial hearing or make a settlement offer.<sup>4</sup> Gerardo—who was never charged with any crime—asked to see a judge, an option requiring him to post a bond of 10% of the truck’s value, around \$3,800. The government cashed his check, but Gerardo saw

no judge. Without a statutory mandate to hold a prompt post-seizure hearing, the government dragged out the forfeiture process, a tactic that leads many owners to give up.<sup>5</sup> It took two years and a lawsuit for Gerardo to get his truck back.

The federal government sometimes even uses people’s constitutional rights as a bargaining chip. After the U.S. Attorney’s Office declined to pursue forfeiture of over \$40,000 CBP officials had seized from



Melisa Ingram was told she had to pay \$1,800 to get her car back after police seized it while her boyfriend was borrowing it.

Anthonia Nwaorie, CBP was legally required to “promptly release” the funds. Instead, CBP threatened to pursue the forfeiture itself unless the grandmother and registered nurse signed a “Hold Harmless Release Agreement,” promising never to sue the agency for violating her due process rights. This was no isolated incident. Indeed, it is CBP policy nationwide, and one the U.S. Department of Homeland Security’s own Office of Inspector General criticized for flouting requirements in federal law that, in cases like Anthonia’s, property be promptly returned to owners.<sup>6</sup> Anthonia, who was never charged with any crime, refused to sign the unconstitutional waiver and instead filed a class action lawsuit to end the practice and get her money back, no strings attached. CBP returned Anthonia’s cash, but the suit continues.<sup>7</sup>

Civil forfeiture laws stack the deck against property owners. But just as bad as the laws are the ways police and prosecutors can manipulate the process. Pressure to wheel and deal or walk away undermines the constitutional rights of those unfortunate enough to find themselves ensnared in civil forfeiture.

1 First Amended Complaint, *Ingram, et al. v. Cnty. of Wayne*, No. 2:20-cv-10288-AJT-EAS (E.D. Mich. May 11, 2020), ECF No. 12.

2 *Harjo v. Albuquerque*, 326 F. Supp. 3d 1145, 1151 (D.N.M. 2018).

3 Proposed Revised Consent Decree on Plaintiffs’ Fifth and Sixth Claims for Relief, *Sourovellis, et al., v. City of Philadelphia et al.*, No. 2:14-cv-04687 (E.D. Pa. Apr. 12, 2019).

4 Mot. to Dismiss of Def. Espinoza at 10, *Serrano v. U.S. CBP, et al.*, Civ. No. 2:17-cv-00048-AM-CW (W.D. Tex. Dec. 13, 2017), ECF No. 50.

5 Complaint, *Serrano v. U.S. CBP, et al.*, Civ. No. 2:17-cv-00048 (W.D. Tex. Sept. 6, 2017), ECF No. 1.

6 U.S. Department of Homeland Security Office of Inspector General. (2020). *DHS inconsistently implemented administrative forfeiture authorities under CAFRA*. <https://www.oig.dhs.gov/sites/default/files/assets/2020-08/OIG-20-66-Jul20.pdf>

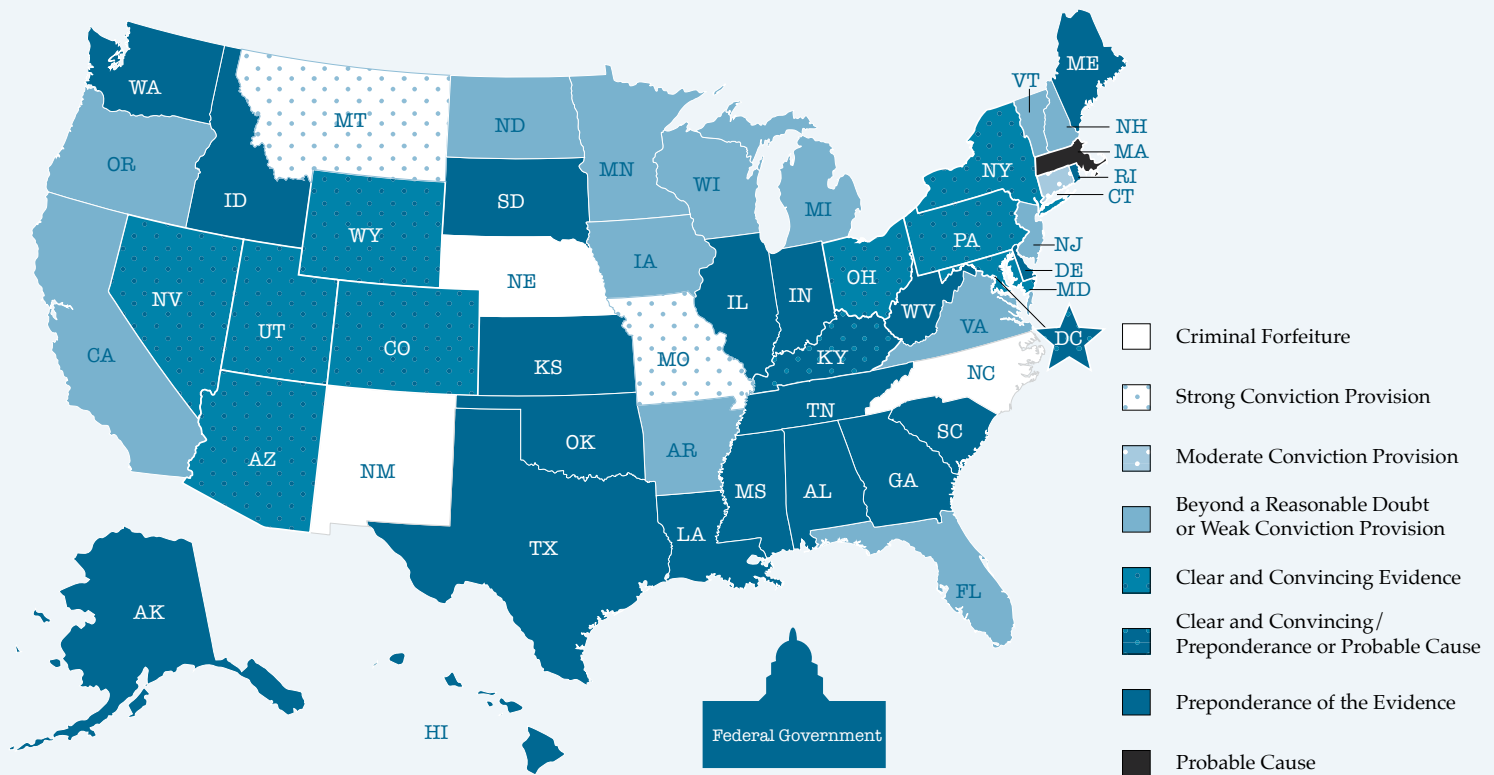
7 Complaint, *Nwaorie v. U.S. CBP, et al.*, Civ. No. 4:18-cv-1406 (S.D. Tex. May 3, 2018), ECF No. 1; Institute for Justice. (2018, May 29). Customs finally returns money to Texas nurse, class action over civil forfeiture practices continues [Press release]. Arlington, VA. <https://ij.org/press-release/customs-finally-returns-money-to-texas-nurse-class-action-over-civil-forfeiture-practices-continues/>

## Standard of Proof

The third core problem with civil forfeiture is the low standard of proof the government must meet to deprive people of their property. As this report’s grades document, the standard is generally far below the familiar proof beyond a reasonable doubt required in criminal cases to establish people’s guilt and deprive them of their freedom. This makes it easy for the government to win civil forfeiture cases and very difficult for property owners to fight back.

The standard of proof defines how convincing the government’s evidence must be to prevail in court.<sup>143</sup> Proof beyond a reasonable doubt is the highest standard in the American criminal justice system. But the typical standard in most civil cases, including civil forfeiture, is mere preponderance of the evidence. This means that the evidence “more likely than not” weighs in the government’s favor—or, put differently, that there is a 51% chance the government is correct. As Figure 20 shows, this is the most common standard, in force in 20 states and under federal law. Massachusetts sets a lower standard still—probable cause. For at least some types of property, 10 states and D.C. have adopted a somewhat elevated standard, clear and convincing evidence. Since the second edition of *Policing for Profit*, 13 states have raised the standard of proof. Most notably, Nebraska abolished civil forfeiture and replaced it with criminal forfeiture. Florida retained civil forfeiture but now has a beyond a reasonable doubt standard, while North Dakota raised the bar from rock-bottom probable cause to clear and convincing evidence.

Figure 20: Standards of Proof for Civil Forfeiture



Note: Florida does not have a conviction provision; its standard is beyond a reasonable doubt.

Despite this progress, the typically low standards nationwide tilt the civil forfeiture playing field toward the government and against property owners. They also underscore the wide gap between civil forfeiture and criminal forfeiture. Most obviously, civil forfeiture generally permits punishment—the loss of property—with proof less than beyond a reasonable doubt. Just as important, the proof required has nothing to do with the *owner's* culpability. Because civil forfeiture is against the property, not the person, the government need show only that the *property* is connected to the alleged crime, not that the owner is guilty. Indeed, the government need not prove that *anyone* is guilty or that a crime even occurred; whether the government ever pursues criminal charges or secures a conviction is irrelevant.

More simply, civil forfeiture is a two-track system. Property is pursued in civil court, while an alleged offender may—or may not—be pursued in criminal court. Criminal forfeiture, by contrast, unifies the two in criminal court, where heightened due process protections apply. With criminal forfeiture, loss of property is part of a criminal sentence following a successful prosecution. That means prosecutors must identify and charge a suspect and a court must determine that (a) a crime occurred, (b) the accused is guilty beyond a reasonable doubt, (c) the property at issue is connected to the crime and (d) no third parties have a legitimate claim to it—all before the property can be forfeited. Compared to civil forfeiture, criminal forfeiture significantly reduces the risk that a person's property will be forfeited unjustly.

The one-track system of criminal forfeiture makes taking property significantly harder for the government, which is precisely why civil forfeiture's defenders favor its separate tracks. Among civil forfeiture's advantages, according to a former federal prosecutor, is the ability to take property when the offender is unknown, when someone else owns the property and when a crime is too minor to warrant a conviction—in other words, when obtaining a criminal conviction is too hard or, in a prosecutor's view, undesirable.<sup>144</sup>

Criminal forfeiture makes such takings more difficult, though not impossible.<sup>145</sup> That is why *Policing for Profit* gives highest marks for standard of proof to states that have effectively banned civil forfeiture and instead use only criminal forfeiture. To date, only three states have done so—New Mexico, Nebraska and North Carolina.

As Figure 20 indicates, 15 states have some form of conviction provision. Since the second edition of *Policing for Profit*, 10 states have adopted such provisions, but as discussed below, these reforms are, at best, modest improvements over civil forfeiture alone—if they do anything at all. Moreover, they vary in important ways. With a better understanding of how these provisions work, this edition of *Policing for Profit* takes a more skeptical view of their utility; it also takes state-by-state variations into account.<sup>146</sup> Thus, the strongest conviction provisions—in Missouri and Montana—earn higher marks for standard of proof, while the weakest earn middling grades.<sup>147</sup>

Overall, despite reforms, in most of the country the government's bar to forfeit property remains troublingly low—and a far cry from the tougher standard of criminal forfeiture.

### *The Problem with “Conviction Requirements”*

In recent years, a growing number of states have tried to fix the problem of unjust civil forfeitures by adopting so-called conviction requirements. Unfortunately, though they purport to solve a key problem with civil forfeiture by abolishing forfeitures without convictions, these provisions rarely live up to their billing. Forfeitures without convictions continue. These laws are better described as “conviction provisions” that require a conviction in only limited cases. They represent at best a modest, misnamed reform—and, at worst, a diversion from the deeper change needed.

Conviction provisions’ failure as an effective reform stems from their maintenance of a two-track system that tries property in civil court and people in criminal court. This has at least two important implications that undermine the provisions’ utility, aside from the lack of a right to counsel and other due process protections available in criminal proceedings.

First, the conviction prerequisite usually applies only if owners make the first move by contesting the forfeiture. Unlike criminal forfeiture, where the government must initiate the process by filing criminal charges, most conviction provisions do not fix the basic problem that civil forfeiture forces owners to go to civil court to win back seized property. If, for any reason, they fail to do so, the government can forfeit the property without a conviction.

And, as this report details, there are many reasons owners may not make it to court: inability to afford counsel, property that is worth less than the cost of hiring an attorney, the difficulty of navigating a complex process with tight deadlines and a process generally stacked against owners. Minnesota, an early adopter of a conviction provision in 2014,<sup>148</sup> illustrates the problem.

The median value of currency forfeited in Minnesota is typically quite low—just \$718 in 2018—and well below the cost of hiring an attorney. And, as noted above, state data indicate forfeiture claims are infrequently filed, in

only 22% of drug and DWI cases. This suggests at least 78% of Minnesota’s forfeitures do not require a conviction, and that figure may be higher given that claims may be abandoned or lead to settlement.<sup>149</sup>

This may be why Minnesota’s conviction provision appears to have had little effect. Since 2014, total forfeiture revenue has remained steady at roughly \$9.4 million annually. Minnesota does not track how many forfeitures are accompanied by a conviction, but a true conviction “requirement” that significantly raised the government’s bar to forfeit would be expected to reduce forfeiture activity more noticeably.<sup>150</sup>

Second, most conviction provisions apply to *any person*, not necessarily the property’s owner. This means the government can convict someone else in criminal court and still forfeit an owner’s property in civil court.<sup>151</sup> Third-party owners can raise an innocent owner

defense, but this is no different than ordinary civil forfeiture and thus hardly constitutes an improvement over civil forfeiture without a conviction provision.

Adding to these weaknesses, several states’ conviction provisions apply only to certain types of property. Michigan’s and Minnesota’s provisions apply to property worth less than \$50,000.<sup>152</sup> California’s is limited to vehicles, real property and

cash worth less than \$40,000.<sup>153</sup> New Jersey sets a lower threshold of just \$1,000 for cash and \$10,000 for other types of property, while in Iowa the conviction provision applies only to property worth less than \$5,000.<sup>154</sup>

In short, the label “conviction requirement” gives the false impression that, absent a conviction, seized property must be returned to its owner. But that is often not the case. These provisions may raise the government’s bar to forfeit in some instances, but more often they make little difference. They are a pale imitation of the one-track process of criminal forfeiture for determining criminal culpability and loss of property. More worrying, a false impression of conviction provisions’ effectiveness may dissipate energy for the more urgent and effective reform of abolishing civil forfeiture.

**In short, the label “conviction requirement” gives the false impression that, absent a conviction, seized property must be returned to its owner. But that is often not the case.**

## Overall Law Grades

Table 1 and Figure 21 show each state’s overall civil forfeiture law grades as of 2020. These marks combine sub-grades for financial incentive, innocent owner burden and standard of proof, as described in Appendix A. Thus, they represent how financially rewarding and how easy civil forfeiture is for law enforcement.

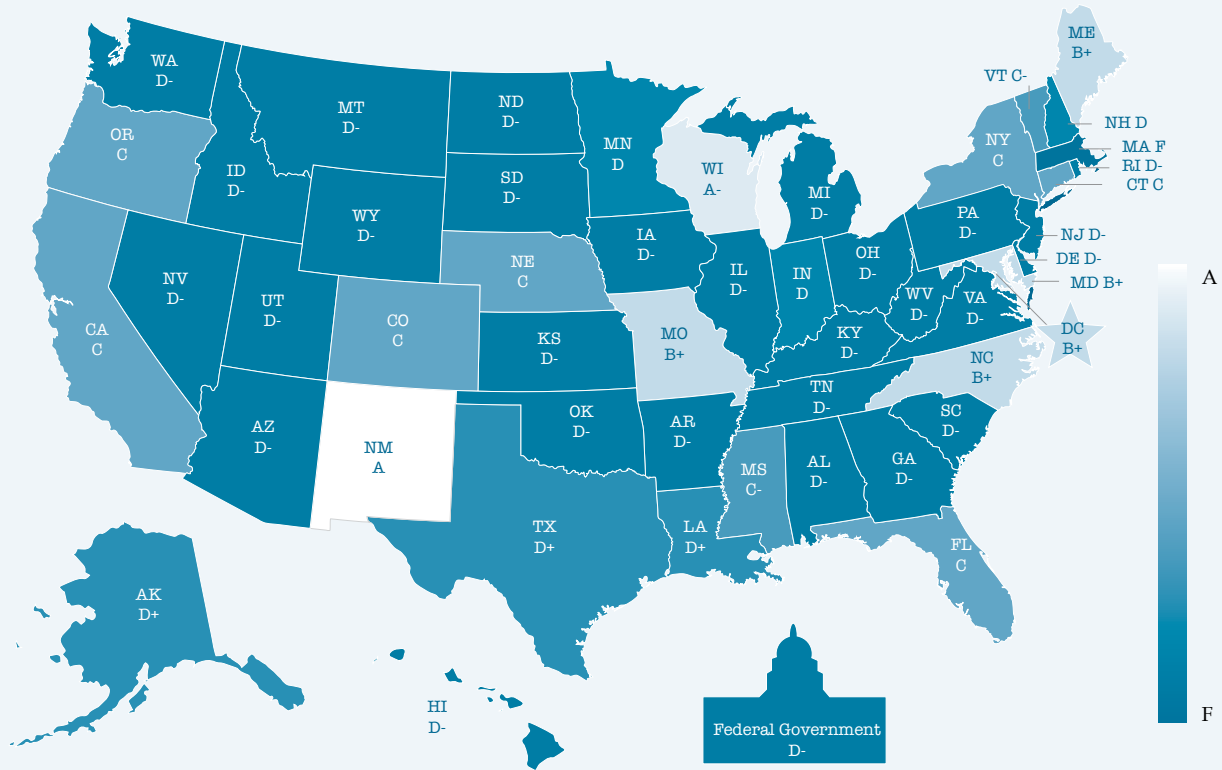
Even with widespread reform efforts, the nationwide picture remains bleak and little changed since the second edition of *Policing for Profit*. Most states—34—and the federal government earn Ds for extending property owners meager protections and giving law enforcement large financial stakes in forfeiture proceeds. Massachusetts does worse still, earning an F. Most improvements have come in the middle range of states that earn Cs, and this is driven by states raising the standard of proof. States without a financial incentive earn the highest marks—though, in at least two of these states, law enforcement agencies are known to retain proceeds. New Mexico earns the nation’s only A.

**Table 1: Civil Forfeiture Law Grades Ranked**

State	Grade	State	Grade
New Mexico	<b>A</b>	Montana	<b>D-</b>
Wisconsin	<b>A-</b>	Iowa	<b>D-</b>
North Carolina	<b>B+</b>	Pennsylvania	<b>D-</b>
D.C.	<b>B+</b>	Utah	<b>D-</b>
Maryland	<b>B+</b>	Michigan	<b>D-</b>
Missouri	<b>B+</b>	Ohio	<b>D-</b>
Maine	<b>B+</b>	Kentucky	<b>D-</b>
Connecticut	<b>C</b>	Arkansas	<b>D-</b>
California	<b>C</b>	New Jersey	<b>D-</b>
Florida	<b>C</b>	North Dakota	<b>D-</b>
Oregon	<b>C</b>	Virginia	<b>D-</b>
Colorado	<b>C</b>	Alabama	<b>D-</b>
Nebraska	<b>C</b>	Arizona	<b>D-</b>
New York	<b>C</b>	Nevada	<b>D-</b>
Mississippi	<b>C-</b>	Tennessee	<b>D-</b>
Vermont	<b>C-</b>	Wyoming	<b>D-</b>
Alaska	<b>D+</b>	Delaware	<b>D-</b>
Louisiana	<b>D+</b>	Georgia	<b>D-</b>
Texas	<b>D+</b>	Hawaii	<b>D-</b>
Minnesota	<b>D</b>	Idaho	<b>D-</b>
New Hampshire	<b>D</b>	Kansas	<b>D-</b>
Indiana	<b>D</b>	Oklahoma	<b>D-</b>
Illinois	<b>D-</b>	South Dakota	<b>D-</b>
Rhode Island	<b>D-</b>	West Virginia	<b>D-</b>
South Carolina	<b>D-</b>	Federal Government	<b>D-</b>
Washington	<b>D-</b>	Massachusetts	<b>F</b>

Note: States are ranked by grade point average on a 4.0 scale. See Appendix A for details of how the grades were created.

Figure 21: Civil Forfeiture Law Grades



### Other Recent Reforms

In addition to the reforms captured by our grades, states have adopted numerous other forfeiture reforms since the second edition of *Policing for Profit*. By far the most popular have been reforms aimed at improving transparency. As noted above, 25 states have enacted reporting laws or expanded existing reporting requirements. The strongest of these—Arizona, Colorado, Kansas and New Jersey—adopted IJ’s model legislation.<sup>155</sup> The test of these reforms, however, will be how well agencies fulfill their reporting requirements. (See “Despite Progress, Forfeiture Transparency and Accountability Remain Limited” on p. 12.)

As for substantive reforms not captured by our grading scheme, eight states limited state and local law enforcement’s use of equitable sharing.<sup>156</sup> (See “Equitable Sharing Creates a Giant Loophole” on p. 46 for a discussion of these limits.) Meanwhile, 18 states adopted incremental reforms ranging from prohibitions on forfeitures in limited circumstances to provisions making forfeiture less tempting for law enforcement to various protections for property owners.

Of those, three states banned the use of forfeiture in some cases. Idaho banned vehicle forfeitures related to minor drug possession, and Maryland adopted a similar ban on forfeiture for simple drug possession.<sup>157</sup> North



Dakota banned forfeitures of homesteaded real property and some vehicles worth less than \$2,000 for controlled substances offenses.<sup>158</sup>

Five states adopted reforms geared toward making forfeiture less enticing for law enforcement, though they stopped short of directly addressing the financial incentive. This includes Florida's filing fees and bond requirement, discussed above.<sup>159</sup> Arizona, Maryland, Pennsylvania and Wisconsin adopted modest limits on the use of forfeiture proceeds.<sup>160</sup>

And a number of states adopted protections for property owners caught up in the forfeiture process. Florida sought to strengthen the link between forfeiture and crime by requiring an arrest before most seizures, while other states pursued a similar tack with the adoption in Wyoming of post-seizure probable cause hearings and in Mississippi of a requirement that law enforcement obtain a warrant within 72 hours of seizure. Similarly, Tennessee strengthened procedural safeguards for innocent owners in post-seizure probable cause hearings (called forfeiture warrant hearings in the state).<sup>161</sup> Other reforms aimed to improve owners' access to due process, such as the establishment of pretrial hearings for owners in Wisconsin, the creation of a motion for return of property in Pennsylvania and the abolition of administrative forfeiture in New Hampshire.<sup>162</sup> Michigan made it easier for property owners to contest forfeiture by eliminating its requirement that they file a bond when filing a claim, while Illinois eliminated its bond requirement for owners challenging administrative forfeiture.<sup>163</sup> And in a move to codify the Eighth Amendment's ban on excessive fines and forfeitures, Idaho and North Dakota implemented reforms allowing courts to review the proportionality of a forfeiture to the crime giving rise to it.<sup>164</sup> (To learn more about the Excessive Fines Clause and state forfeiture, see "Curbing 'Excessive' Forfeitures" on p. 22.)

Also in the vein of improving protections for owners, several states—Arizona, Florida, Tennessee, Utah and Wisconsin—established or expanded access to attorney fees, allowing owners to petition for payment of their lawyers' fees after a successful forfeiture challenge. Arizona also repealed its unique "reverse" attorney fee provision, which forced owners to pay 100% of the government's attorney fees if the government prevailed on even 1% of its case.<sup>165</sup>


Other relevant reforms included new notice requirements,<sup>166</sup> procedures to allow owners to use property during forfeiture actions<sup>167</sup> and to return property to owners who are acquitted,<sup>168</sup> and a provision permitting joint owners in DWI cases to challenge forfeitures in court.<sup>169</sup> And Virginia and Wyoming prohibited roadside waivers, which police used to coerce drivers into waiving their right to property seized during a traffic stop.<sup>170</sup>

Wyoming's roadside waiver reform came after the high-profile case of Phil Parhamovich, a musician pressured during a routine traffic stop on I-80 near Cheyenne to sign over his life savings of \$91,800, even though the funds were legitimately earned and Phil was not charged with any crime. IJ intervened and persuaded the court to order Phil's money returned. Wyoming legislators then banned the practice.<sup>171</sup>

Finally, New Mexico clarified that its best-in-the-nation reforms apply to municipalities while also adding new procedural protections.<sup>172</sup>

At the federal level, Congress in 2019 passed the Clyde-Hirsch-Sowers RESPECT Act as part of the Taxpayer First Act, curbing the Internal Revenue Service's practice of seizing funds for alleged "structuring" violations—depositing or withdrawing cash in amounts less than \$10,000 to evade bank reporting requirements.<sup>173</sup> Those requirements are intended to catch criminals laundering money or engaging in other illicit activity, but the IRS had for years been seizing entire bank accounts from business owners without any evidence they had done anything wrong—and despite owners' legitimate reasons for their banking patterns.<sup>174</sup> Indeed, the Treasury Inspector General for Tax Administration found the IRS had pursued such cases because the DOJ "had encouraged task forces to engage in 'quick hits,' where property was more quickly seized and more quickly resolved through negotiation, rather than pursuing cases with other criminal activity (such as drug trafficking and money laundering), which are more time-consuming."<sup>175</sup>

The Clyde-Hirsch-Sowers RESPECT Act, named for three innocent business owners whose bank accounts had been wrongfully seized by the IRS, limits structuring forfeitures to cases where the funds themselves come from an illegal source or are used to conceal illegal activity. It also allows owners to promptly challenge such seizures.<sup>176</sup>

A full-page photograph of a man with a beard and a jacket, holding a tool, standing in a barn. The image is monochromatic with a blue tint. The man is looking slightly to the right of the camera. The background shows the interior of a barn with metal railings and a wooden floor.

One of the innocent business owners for whom the Clyde-Hirsch-Sowers RESPECT Act is named, Randy Sowers is a Maryland dairy farmer who had his entire bank account seized due to alleged structuring.

## *Equitable Sharing Creates a Giant Loophole*

Even in states with forfeiture laws that provide relatively strong protections and due process rights, innocent people remain at risk of having their property forfeited. That is because the federal government provides a massive loophole: federal equitable sharing. Equitable sharing allows state and local law enforcement agencies to partner with the federal government to seize and forfeit property under federal law—and receive up to 80% of the proceeds—regardless of state law.<sup>177</sup>

Equitable sharing gives state and local agencies another avenue for forfeiting property and gaining a share of proceeds—one backed by the resources of the federal government. More than that, though, the program enables law enforcement agencies to circumvent their own state's forfeiture laws in favor of forfeiting property under federal forfeiture laws, which earn a D- for being some of the worst in the country. Thus, forfeiting property through equitable sharing may be especially appealing when a state offers property owners more protections, or makes forfeiture less lucrative, than federal law does.

Proponents argue equitable sharing—and the revenue it generates—is essential for federal, state and local law enforcement to effectively collaborate, especially when it comes to combatting the illegal drug trade. In theory, these forfeitures take the profit out of crime and provide state and local agencies with the resources they need to continually step up their crime-fighting abilities.<sup>178</sup> But recent research finds no evidence that this is actually true. Results from the 2019 study by economist Brian Kelly indicate equitable sharing payments to state and local agencies did not translate into more crimes solved or lower levels of drug use—though they did correspond to fiscal stress, suggesting equitable sharing use increases when the economy turns sour and law enforcement budgets are likely to suffer cuts.<sup>179</sup> (See “Evidence Suggests Forfeiture Doesn't Work” on p. 51.)

### *Didn't DOJ Fix the Problem?*

In 2015, following public outcry about abuses under the equitable sharing program, then-Attorney General

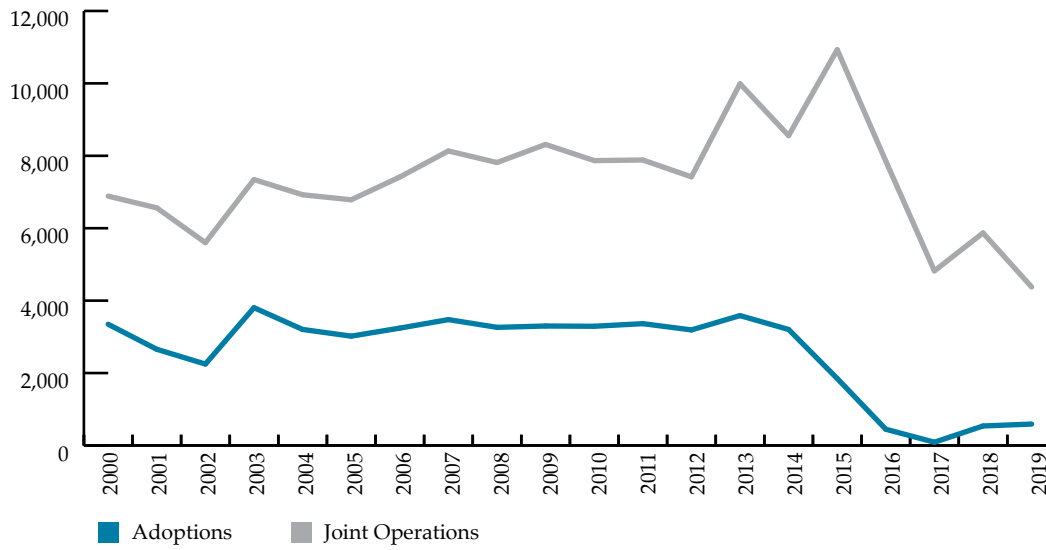
Eric Holder placed new limits on DOJ's use of one type of equitable sharing—adoptions—with Treasury following suit.<sup>180</sup> Adoptions occur when state or local agencies seize property without the involvement of any federal law enforcement officers and then later request that the federal government “adopt” the property by forfeiting it under federal law. This contrasts with joint operations, where seizures are conducted by state or local agencies that are part of a federal task force or working on a joint investigation.<sup>181</sup>

The Holder policy change focused on adoptions out of concern that a lack of federal oversight of seizures hid abuses and that agencies were using adoptions to circumvent stronger state laws.<sup>182</sup> Critics warned, however, that the new policy did not go far enough. Among other problems, the change did not touch joint operations, which have historically made up the bulk of equitable sharing forfeitures.<sup>183</sup> In fact, adoptions accounted for just 30% of equitable sharing forfeiture cases and 17% of the total value forfeited under equitable sharing between 2000 and 2015.<sup>184</sup>

Critics also warned that, absent congressional action, the policy change could be undone by a future administration.<sup>185</sup> And that is, in fact, what happened. In 2017, then-Attorney General Jeff Sessions largely rolled back the change, with Treasury again following DOJ's lead.<sup>186</sup> As a nod to the problems the Holder change was meant to remedy, Sessions introduced new “safeguards” intended to protect innocent property owners. However, the new provisions are weak at best and do not provide meaningful protections.<sup>187</sup>

DOJ data indicate that adoptive forfeitures did decrease drastically in the years following the Holder policy change and that they have been on the rise since the Sessions reversal (see Figure 22).<sup>188</sup> However, it is too soon to predict whether the trend will continue. Moreover, the Holder change came at a time when both adoptive and joint forfeitures were already decreasing. As a result, the effects of either policy are difficult to detect. What is clear is that equitable sharing remains a tool very much available to state and local law enforcement.

**Figure 22: Number of DOJ Equitable Sharing Forfeitures, Adoptions vs. Joint Operations, 2000–2019**

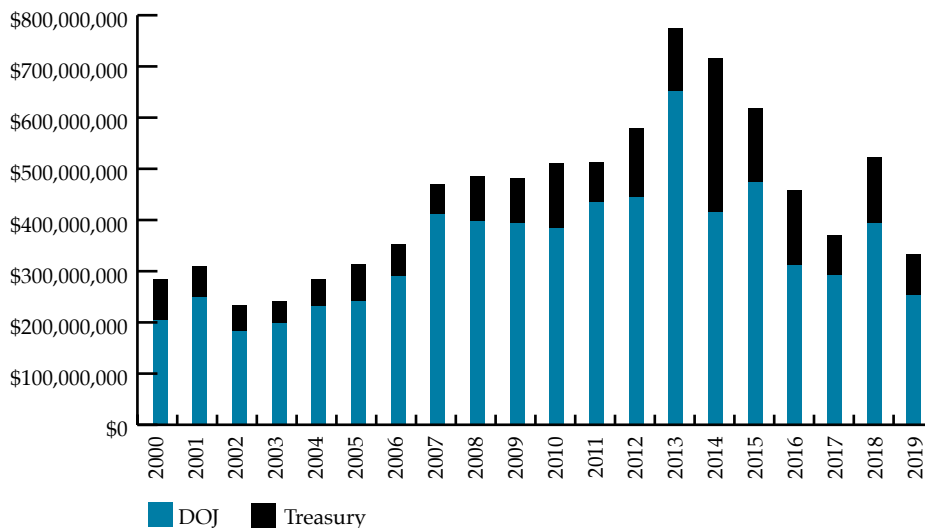


Source: Authors' calculations based on DOJ's Consolidated Asset Tracking System, updated April 3, 2020, <https://www.justice.gov/afp/freedom-information-act>

### *Trends in Equitable Sharing Revenues and Payments*

Equitable sharing revenues climbed steadily for the better part of the past two decades. Though they have begun to fall in recent years, revenues remain vast, and state and local law enforcement agencies continue to collect hundreds of millions of dollars through equitable sharing annually (see Figure 23). Federal equitable sharing payments peaked in 2013 at over \$779 million before declining to \$333.8 million in 2019. Payments totaled more than \$8.8 billion from 2000 to 2019.<sup>189</sup>

**Figure 23: DOJ and Treasury Equitable Sharing Payments to States, 2000–2019**



Source: DOJ's and Treasury's annual forfeiture reports.

While it is impossible to isolate a single cause of this trend, the Great Recession may have played a role. Tax revenues decline during a recession even as demand for social services increases, squeezing state and local governments.<sup>190</sup> Although the recession officially ended in 2009,<sup>191</sup> local governments only began to feel the effects in 2010,<sup>192</sup> and it took until 2013–2014 for the U.S. economy to recover.<sup>193</sup> Equitable sharing trends largely track with this timeline, and as the 2019 Kelly study suggests, agencies may have turned to equitable sharing during that time.<sup>194</sup>

### How States Stack Up

States vary in their agencies' use of federal equitable sharing. To determine how states stack up, we calculated how much revenue each state received through DOJ's program in recent years and standardized those amounts to account for different rates of drug arrests in the states.<sup>195</sup> As drug crimes are the alleged activity that most often leads to equitable sharing forfeitures, standardizing states' revenues by drug arrest rates allows us to see which states disproportionately participate in the equitable sharing program. Table 2 ranks the states according to their standardized equitable sharing activity, with higher numbers indicating states with the heaviest reliance on equitable sharing. In other words, South Dakota ranks first because it participates in equitable sharing the least, while Rhode Island ranks 51st because it participates in equitable sharing the most.

**Table 2: State Equitable Sharing Rankings**

State	Rank	State	Rank	State	Rank
South Dakota	<b>1</b>	Nebraska	<b>18</b>	Kentucky	<b>35</b>
North Dakota	<b>2</b>	Minnesota	<b>19</b>	Alabama	<b>36</b>
Wyoming	<b>3</b>	Oregon	<b>20</b>	New Jersey	<b>37</b>
New Mexico	<b>4</b>	Louisiana	<b>21</b>	Pennsylvania	<b>38</b>
Idaho	<b>5</b>	Arkansas	<b>22</b>	Colorado	<b>39</b>
Maine	<b>6</b>	Arizona	<b>23</b>	Michigan	<b>40</b>
District of Columbia	<b>7</b>	Tennessee	<b>24</b>	Ohio	<b>41</b>
Iowa	<b>8</b>	Wisconsin	<b>25</b>	Washington	<b>42</b>
Montana	<b>9</b>	Hawaii	<b>26</b>	Georgia	<b>43</b>
Utah	<b>10</b>	Mississippi	<b>27</b>	Florida	<b>44</b>
New Hampshire	<b>11</b>	Connecticut	<b>28</b>	North Carolina	<b>45</b>
Vermont	<b>12</b>	Kansas	<b>29</b>	Illinois	<b>46</b>
Delaware	<b>13</b>	Nevada	<b>30</b>	Texas	<b>47</b>
Oklahoma	<b>14</b>	Virginia	<b>31</b>	Massachusetts	<b>48</b>
Alaska	<b>15</b>	Maryland	<b>32</b>	California	<b>49</b>
West Virginia	<b>16</b>	Indiana	<b>33</b>	New York	<b>50</b>
South Carolina	<b>17</b>	Missouri	<b>34</b>	Rhode Island	<b>51</b>

While some states, such as Texas (D+, ranked 47th) and Massachusetts (F, ranked 48th), have poor state laws and use equitable sharing extensively, others, such as 34th ranking Missouri illustrate how equitable sharing serves as a loophole to circumvent stronger state forfeiture laws.

Missouri earns a B+ for its forfeiture laws, largely because the state Constitution directs forfeiture proceeds to schools, not law enforcement. But a 2019 investigation found less than 2% of forfeited funds make it to Missouri schools, thanks at least in part to the equitable sharing loophole.<sup>196</sup>

Indeed, a state audit of Missouri's 2019 seizures found state and local law enforcement agencies transferred nearly half the value of their seizures to the federal government for forfeiture.<sup>197</sup> Funds the agencies receive back through equitable sharing do not go to the schools; in fact, they must stay with law enforcement and be used for law enforcement purposes.<sup>198</sup> One Missouri prosecutor described equitable sharing as a "valuable resource," telling reporters, "It takes the proceeds of criminal activities out of the hands of the criminals, (and) it benefits local law enforcement to enhance our training and enhance our equipment. It's a win-win."<sup>199</sup> It might be a win for law enforcement, but this activity directly circumvents the Missouri Constitution.<sup>200</sup>

The experience of Sidialy Diaafar shows how equitable sharing's promise of otherwise unavailable forfeiture proceeds opens the door to abuse. On May 2, 2019, Diaafar was stopped on I-95 in Cumberland County, North Carolina, by a sheriff's officer. Though the officer claimed Diaafar had been speeding and weaving, he issued no ticket. Instead, he called in a K-9 unit to search the car—without consent, a warrant or probable cause. The search turned up no drugs or other contraband, only \$22,970 in cash Diaafar had already told the officer he was carrying. Diaafar said he had withdrawn the funds from his bank for potential investment in a convenience store, and he offered documents verifying his story. The officer declined the offer and instead seized the cash, saying it would be turned over to DHS. He gave Diaafar a receipt that did not list the value of cash taken but did list a phone number for Homeland Security Investigations. No arrest was made or charges filed.<sup>201</sup>

Such a seizure would be unlikely to stick under North Carolina law. North Carolina effectively bans civil forfeiture, so to forfeit Diaafar's cash, the sheriff's office

would have had to refer the case to the state's Attorney General's Office, which would have then needed to convict Diaafar. In addition, even if the forfeiture had been successful, any proceeds would have gone not to the Cumberland County Sheriff's Office but to public

schools. These features of North Carolina law earn the state a B+, one of the top grades in *Policing for Profit*. But with equitable sharing, North Carolina law enforcement can undermine these protections and get a cut of the proceeds. Federal data suggest they do so routinely, as the state ranks as one of the worst states—45th—for participation in the program.

Other states with grades better than the federal government's, such as California (C, ranked 49th), New York (C, ranked 50th), Florida (C, ranked 44th) and Maryland (B+, ranked 32nd), are among the worst offenders when it comes to equitable sharing use.

### *How States Have Shrunk the Loophole*

To date, no state has completely prohibited state and local law enforcement from participating in equitable sharing, but nine states and D.C. have taken steps to shrink the loophole.

Five states—Arizona, Maryland, Nebraska, New Mexico and Ohio—have prohibited state and local agencies from transferring property to the federal government for forfeiture unless the property is worth more than a threshold amount.<sup>202</sup> These thresholds range from \$25,000 in Nebraska to \$100,000 in Ohio. New Mexico also bars law enforcement from receiving any equitable sharing proceeds. By outlawing the federal forfeiture of less valuable property, these states have likely drastically reduced the number of their equitable sharing cases, potentially protecting thousands of innocent property owners.

For example, DOJ data indicate that between 2012 and 2016—the year Nebraska passed its anticircumvention law—93% of Nebraska's equitable sharing forfeitures fell below the state's \$25,000 threshold for equitable sharing participation.<sup>203</sup> Under the new law, such forfeitures either do not happen or must be processed under state law, which guarantees much stronger protections for property owners.<sup>204</sup>

Pennsylvania and D.C. have prohibited agencies from participating in federal adoptions, period.<sup>205</sup>

**Missouri earns a B+ for its forfeiture laws, largely because the state Constitution directs forfeiture proceeds to schools, not law enforcement. But a 2019 investigation found less than 2% of forfeited funds make it to Missouri schools, thanks at least in part to the equitable sharing loophole.**


However, because adoptions make up a relatively small portion of equitable sharing forfeitures, these reforms are unlikely to have much effect on equitable sharing activity in those jurisdictions.

California and Colorado have attempted to decrease the size of the equitable sharing loophole by removing state and local agencies' financial incentive for participating in the program rather than restricting participation outright.<sup>206</sup> Both states allow agencies to turn any property over to the federal government for forfeiture but prohibit agencies from receiving their cut of the proceeds unless the property meets a certain value threshold (\$40,000 in California and \$50,000 in Colorado) and other conditions are met.<sup>207</sup> (In a tidy illustration of the profit motive behind equitable sharing, Colorado's reform prompted the creation of a grant program, funded by legislative appropriations, to reimburse law enforcement agencies for the proceeds they would lose from equitable sharing.<sup>208</sup>)

Wisconsin also allows state and local agencies to transfer seized property to the federal government but

bars them from receiving proceeds unless someone is convicted of the crime that gave rise to the seizure. However, several exceptions undermine this reform. Most notably, if no one claims the seized property after nine months or if the defendant strikes an immunity deal with the prosecution, state and local agencies can receive the proceeds with no restrictions.<sup>209</sup>

Drastically reducing the profitability of equitable sharing is likely to reduce agencies' participation in the program. But while thresholds provide some protection, they are, at the end of the day, arbitrary. Carrying large amounts of cash or driving an expensive car is not a crime, and there is no good reason for police and prosecutors to treat properties on either side of an arbitrary threshold differently.<sup>210</sup> All property owners are entitled to the same due process rights under the U.S. Constitution, and until the equitable sharing program is eliminated, those rights remain at risk.



Now defunct, Philadelphia's civil forfeiture machine nearly made Chris and Markela Sourovelis homeless, all because their son sold a small amount of drugs.

## Evidence Suggests Forfeiture Doesn't Work

Proponents offer two main arguments in support of forfeiture. First, they argue it fights crime by hitting criminals where it hurts—in their wallets—and channels the proceeds into greater law enforcement efforts. Proponents claim that, in taking the profit out of crime, forfeiture is more effective in taking down criminals and cartels than criminal prosecutions alone. Moreover, it supposedly turns criminals' money into greater funds for law enforcement, which can be used to fight more crime. Second, proponents often claim forfeiture proceeds can be used to compensate crime victims and invest in anti-drug and other community programs. While these arguments may sound reasonable, they are not supported by evidence. Available data call both into question.

### *Forfeiture Doesn't Fight Crime*

Perhaps the most common argument in favor of forfeiture is that it removes the profits and instrumentalities of crime and thus fights crime by weakening criminal organizations, punishing criminals and deterring crime while also giving law enforcement greater resources with which to fight crime.<sup>211</sup> The federal government highlights the major drug operations it busts and the high-profile money laundering schemes it foils thanks to forfeiture.<sup>212</sup> But multimillion-dollar, let alone billion-dollar, forfeitures from drug kingpins and financial fraudsters are far from the norm.<sup>213</sup>

As discussed in “Big-Time Criminals or Small-Time Forfeitures?” on p. 20, available data on the size of individual forfeitures suggest the vast majority are of relatively low value. At the federal level, recent data indicate half of DOJ's currency forfeitures are worth less than \$12,090. And for Treasury, that number is even lower—half of its currency forfeitures are worth less than \$7,320.<sup>214</sup> That is not kingpin money—instead, it could be cash intended to purchase a used car,<sup>215</sup> legal gambling winnings<sup>216</sup> or legitimate profits from cash-only businesses.<sup>217</sup> And the median value of currency forfeited under state law is even lower. Thirteen of the 21 states for which we have data had a median value of less than \$1,000, with a few states coming in at just a few hundred dollars. Seizing and forfeiting the few hundred dollars a person happens to have in their wallet during an encounter with law enforcement seems unlikely to bring down drug traffickers or large criminal organizations.

Moreover, most forfeiture reporting systems fail to track whether forfeiture efforts are tied to convictions or advance criminal investigations. For example, the federal

government maintains detailed databases that track seized property, recording information such as when property was seized, its value and its final disposition. Between them, these databases track every asset seized by agencies within DOJ, Treasury and DHS and contain thousands of unique variables. Not a single variable tracks whether anyone was charged with a crime or whether a conviction was obtained in conjunction with a forfeiture.<sup>218</sup> This makes it difficult, if not impossible, to evaluate whether federal forfeiture programs are working as intended to target crime.

In a similar vein, in 2020, DHS's OIG publicly criticized DHS for having no performance metrics to gauge forfeiture program effectiveness. The OIG recommended creating an office to implement such metrics and oversee forfeitures, but DHS balked—even though one DHS agency, CBP, routinely violates forfeiture policies and may be taking property from innocent people.<sup>219</sup>

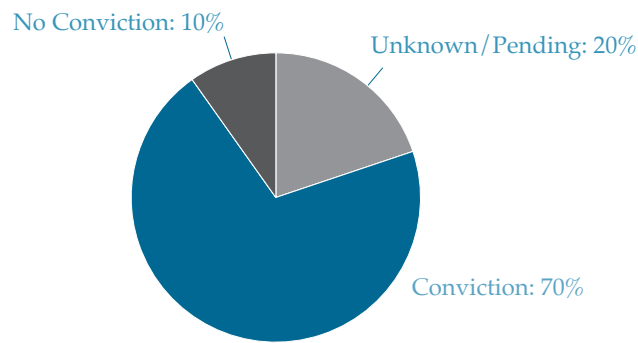
On the state side, only a handful of states attempt to track convictions, and, with one exception, the data they collect are spotty at best and cannot be reliably analyzed. This may be because reporting responsibilities often lie with seizing agencies, which may not always know what ultimately becomes of property.

Only Pennsylvania reliably tracks whether a person was convicted of a crime in conjunction with a forfeiture, though data do not indicate whether the forfeiture was civil or criminal nor whether the person convicted owned the property. Convictions accompanied approximately 70% of forfeitures in 2018 (see Figure 24). While the reason for this high conviction rate is difficult to determine, it is possible recent public attention on forfeiture has prompted prosecutors to exercise more caution when it comes to civil forfeitures. That is certainly the case in Philadelphia, where a recent class action lawsuit brought by IJ resulted in the city dramatically reforming its civil forfeiture program.<sup>220</sup>

But despite Philadelphia's progress, other counties in Pennsylvania have recently stepped up their forfeiture activity.<sup>221</sup> For example, in 2019, Berks County District Attorney John T. Adams went so far as to say, “We're looking for assets more so than we ever did before. . . . This is bad guys' money that we're taking to enable us to arrest more bad guys. You're damn right we're gonna take it.”<sup>222</sup> Indeed, in Pennsylvania, county conviction rates range from 100% in some counties with few forfeitures to just 23% in Lackawanna County. Pennsylvania law is permissive, leaving the choice up to prosecutors, so this variation may be due to different policies and practices put in place by different district attorneys.



**Figure 24: Pennsylvania Forfeited Property Conviction Rates, 2018.**



Source: Pennsylvania Attorney General's FY17-18 forfeiture report.

Pennsylvania's overall conviction rate notwithstanding, a growing body of literature finds little evidence forfeiture fights crime. This includes economist Brian Kelly's 2019 equitable sharing study as well as a 2017 study by DOJ's own Office of the Inspector General.<sup>223</sup> The OIG study analyzed a sample of 100 DEA cash seizures and found no evidence the seizures advanced a criminal investigation.

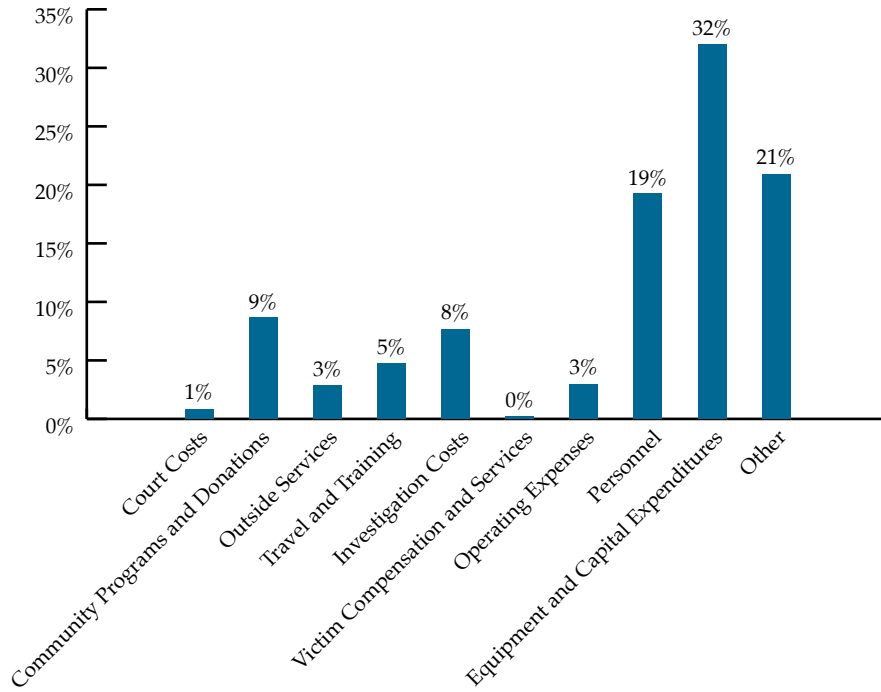
At the state level, research analyzing New Mexico's 2015 reform found nothing to corroborate proponents' claims that ending civil forfeiture would reduce interagency cooperation, place a strain on law enforcement resources or lead to a surge in crime.<sup>224</sup> In fact, eliminating civil forfeiture, and replacing it with criminal forfeiture, had no effect on crime in the state. (See "New Research: Eliminating Civil Forfeiture Does Not Increase Crime" on p. 32.)

### *Victim Compensation, Community Programs Gain Little*

In addition to touting civil forfeiture's supposed crime-fighting benefits, proponents often argue forfeited property is used to compensate crime victims and invest in community programs, such as anti-drug initiatives.<sup>225</sup> Federal agencies highlight the billions they recovered from individuals involved in Bernie Madoff's Ponzi scheme and returned to defrauded investors.<sup>226</sup> But on the whole, DOJ spends less than one-third of its forfeiture proceeds on victim restitution or other compensation to third parties with a claim to forfeited property, such as lienholders.<sup>227</sup> Federal guidelines also prohibit state and local agencies from transferring more than \$25,000 a year in DOJ equitable sharing proceeds to community-based organizations such as drug treatment facilities, job skills programs, and youth programs offering drug and crime prevention education. Treasury equitable sharing proceeds cannot be used this way at all.<sup>228</sup>

And when it comes to state and local agencies' expenditures, the picture is even bleaker. While some states mandate spending on victim compensation or community programs or take a cut off the top for these purposes,<sup>229</sup> available expenditure data for 13 states<sup>230</sup> suggest money is otherwise rarely spent on victim compensation or community programs. More often, forfeiture funds are spent on everyday expenses for police and prosecutors. In 2018, 32% of total expenditures across 13 states went toward equipment and capital expenditures, and 19% was spent on personnel (see Figure 25).<sup>231</sup> Personnel expenditures are particularly troubling as they may include law enforcement salaries, benefits, overtime and even bonuses, giving police and prosecutors a strong personal incentive to seize and forfeit property.<sup>232</sup> Another 21% of expenditures were categorized as "other," either because the expense category was unknown or because an expenditure represented a transfer to another law enforcement agency, making it impossible to know how the funds were eventually spent.

**Figure 25: Total Expenditures from Forfeiture Funds by Category, 13 States, 2018**



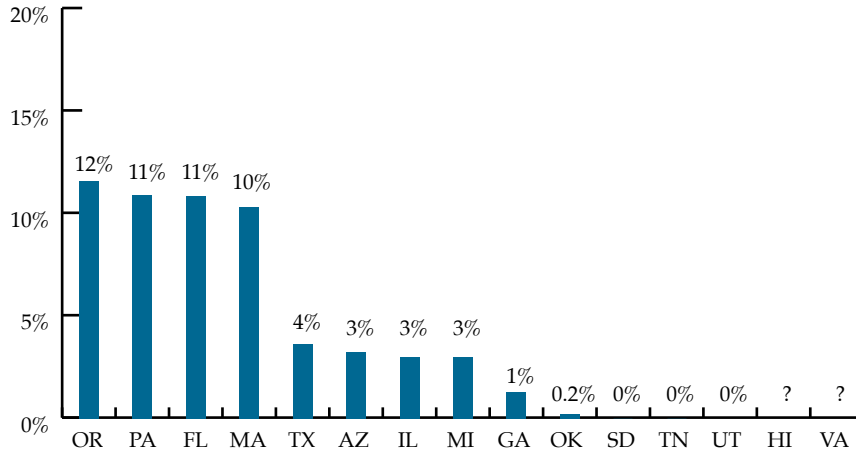
Note: The 13 states are Arizona, Florida, Georgia, Hawaii (Department of the Attorney General only), Massachusetts (District Attorneys and Office of the Attorney General only), Oklahoma, Oregon, Pennsylvania, South Dakota (Attorney General only), Tennessee (Department of Safety and Homeland Security only), Texas, Utah and Virginia. Data may not cover the same 12-month period for all states. See data notes in State Profiles for source details.

By comparison, the amount spent on community programs is tiny. Of the 15 states for which we obtained data,<sup>233</sup> none spent more than 12% of forfeiture proceeds on community programs (see Figure 26). Most spent under 5%. And states' spending on victim compensation was even worse: Every state spent 2% or less of forfeiture proceeds on victims (see Figure 27).<sup>234</sup> Some states, represented by question marks in Figures 26 and 27, do not track these categories of spending in the first place. These states may include this spending in their "other" categories, or they may spend so little on community programs and victim compensation that they do not bother to track it. Either way, it is impossible to measure what—if anything—these states spend on community programs and victims.

Florida's relatively high spending on community programs may be due to a state law requiring agencies to spend at least 25% of forfeiture proceeds on community drug education programs.<sup>235</sup> However, at 11%, Florida's spending on this category is lower than the law requires, suggesting agencies either are not living up to their legal obligations or are not reporting their spending consistently.

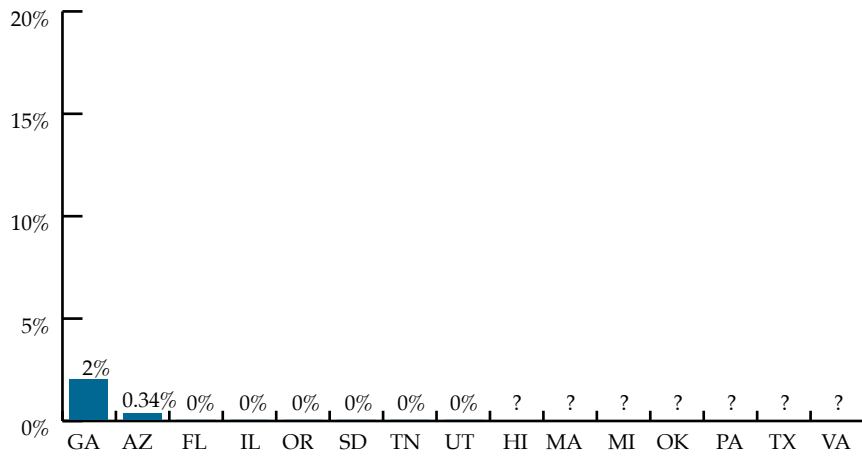
Taken together, and notwithstanding a few outliers, these findings undermine claims that community improvement and victim compensation are important purposes of forfeiture.

**Figure 26: Percentage of Expenditures from Forfeiture Funds Spent on Community Programs and Donations, 15 States, 2017–2019 Average**



Note: Hawaii expenditures are for the Department of the Attorney General only. Massachusetts' are for District Attorneys and the Office of the Attorney General. South Dakota's are for the Attorney General. Tennessee's are for the Department of Safety and Homeland Security. Data cover a mix of calendar and fiscal years. Not all states had data for all three years. See data notes in State Profiles for source details.

**Figure 27: Percentage of Expenditures from Forfeiture Funds Spent on Victim Compensation and Services, 15 States, 2017–2019 Average**



Note: Hawaii expenditures are for the Department of the Attorney General only. Massachusetts' are for District Attorneys and the Office of the Attorney General. South Dakota's are for the Attorney General. Tennessee's are for the Department of Safety and Homeland Security. Data cover a mix of calendar and fiscal years. Not all states had data for all three years. See data notes in State Profiles for source details.

# South Carolina High Court Weighs Forfeiture and the Constitution

The South Carolina Supreme Court could soon sound the death knell for civil forfeiture in the state. Currently pending before the court is the government's appeal<sup>1</sup> from a trial court decision finding every core part of South Carolina's forfeiture system unconstitutional.

Most notably, the trial court judge decried the large financial stake in forfeiture that South Carolina law gives police and prosecutors. Under state law, police can keep up to 75% of forfeiture proceeds, with another 20% going to prosecutors. (The remaining 5% goes to the state's general fund.)<sup>2</sup> In addition, the law earmarks the first \$1,000 of any cash forfeiture for the agency that seized it.<sup>3</sup> And law enforcement can spend these proceeds with little oversight, maintaining discretionary accounts they can use for all manner of one-off purchases that would not otherwise be approved in their budgets. This, the judge held, violates the U.S. Constitution's guarantee of due process because it "create[s] an institutional incentive for forfeiture program officials to vigorously pursue forfeitures even where there is no basis for a forfeiture."<sup>4</sup>

The judge also criticized the law's requirement that owners prove their innocence and the lack of judicial authorization before or judicial review after a seizure, holding that these features, too, violate due process.<sup>5</sup> Finally, the judge held that, in allowing law enforcement "to seize unlimited amounts of property from citizens without regard to the proportionality of the offense committed," South Carolina law violates the Eighth Amendment's Excessive Fines Clause, recently applied to the states in *Timbs v. Indiana*<sup>6</sup> (see "Curbing 'Excessive' Forfeitures" on p. 22).

The decision followed in the wake of a series of explosive reports on civil forfeiture in South Carolina that rocked the state. Investigative journalists with *The Greenville News* and other local outlets teamed up to publish exposés detailing

the many injustices of the state's civil forfeiture practices.<sup>7</sup> Their "TAKEN" series revealed that, over three years, South Carolina police seized at least \$17 million from people through civil forfeiture, with a majority of the funds going back to the police departments.<sup>8</sup> More than half of cash seizures were of less than \$1,000, and a third were of less than \$500.<sup>9</sup> All of that money very likely went directly to the police departments that seized it.<sup>10</sup>

The series also revealed that in 75% of South Carolina's civil forfeiture cases, the government kept all the cash or goods seized, with 19% of cases ending in a settlement or partial return of property. In just 6% of cases did owners get their property back.<sup>11</sup> And in many cases, no one was ever charged, let alone convicted of a crime: Digging through thousands of case files, the "TAKEN" journalists found that in about 20% of cases, no one was charged with a crime, and in another 20%, criminal charges were filed but the defendant was not convicted.<sup>12</sup>

Forfeitures have ground to a halt in the two counties affected by the trial court's order. The counties' prosecutor has even advised police departments not to seize large items like vehicles due to the uncertainty and difficulty of storing such items while cases are pending. Meanwhile, it is business as usual in the rest of the state, leading the prosecutor to complain the two counties are "being treated differently than everybody else in the state."<sup>13</sup> But that will change once the Supreme Court renders an opinion.

The South Carolina Supreme Court has the opportunity to dramatically curtail or even end civil forfeiture. Should it uphold the trial court's decision and deem the state's civil forfeiture laws unconstitutional, it will strike a blow for due process that would resonate throughout South Carolina and beyond.



The Greenville News's "Taken" series uncovered injustices in South Carolina's civil forfeiture practices.

- 1 Initial Brief of Respondents, *Richardson v. \$20,771.00 U.S. Currency*, Appellate Case No. 2020-000092 (S.C. July 15, 2020), on appeal from 2017-CP-26-007411 (Horry Cnty. Ct. of Comm. Pleas, 15th Jud. Circuit), <https://ij.org/wp-content/uploads/2020/07/Initial-Brief-of-Respondents-FINAL-TO-FILE-07.15.20-IJ115663xA6322.pdf>
- 2 S.C. Code Ann. § 44-53-530(e).
- 3 S.C. Code Ann. § 44-53-530(f).
- 4 Order, *Richardson v. \$20,771.00 U.S. Currency*, Case No. 2017-CP-26-007411 (Horry Cnty. Ct. of Comm. Pleas, 15th Jud. Circuit, South Carolina, Aug. 28, 2019).
- 5 Order, *Richardson v. \$20,771.00 U.S. Currency*, *supra* note 4.
- 6 Order, *Richardson v. \$20,771.00 U.S. Currency*, *supra* note 4.
- 7 Ramsey, W. (2019a, Jan. 27). How we brought TAKEN to life. *The Greenville News*. <https://www.greenvilleonline.com/story/news/taken/2019/01/27/taken-civil-forfeiture-investigation-greenville-news-anderson-usa-today-network-journalism/2458361002/>; Ramsey, W. (2019b, Jan. 27). What's in the TAKEN civil forfeiture investigation: Table of contents. *The Greenville News*. <https://www.greenvilleonline.com/story/news/taken/2019/01/27/guide-taken-investigative-series-greenville-news-journalism/2638405002/>
- 8 Lee, A., Cary, N., & Ellis, M. (2020a, Jan. 17). SC cops defend keeping cash they seized: 'What's the incentive' otherwise? *The Greenville News*. <https://www.greenvilleonline.com/story/news/taken/2019/02/03/sc-civil-forfeiture-police-defend-practice-say-funds-essential-law-enforcement/2746412002/>
- 9 Gross, D. J. (2020, July 20). Sweeping civil forfeiture reform could come in SC with case drawing national attention. *The Greenville News*. <https://www.greenvilleonline.com/story/news/local/south-carolina/2020/07/17/civil-forfeiture-reform-could-sc-case-before-supreme-court-taken/5450944002/>
- 10 S.C. Code Ann. § 44-53-530(f).
- 11 Lee, Cary and Ellis, 2020a.
- 12 Lee, A., Cary, N., & Ellis, M. (2020b, Jan. 17). Taken: How police departments make millions by seizing property. *The Greenville News*. <https://www.greenvilleonline.com/in-depth/news/taken/2019/01/27/civil-forfeiture-south-carolina-police-property-seizures-taken-exclusive-investigation/2457838002/>
- 13 Cary, N. (2020, Jan. 30). Statewide precedent could be set in forfeiture case to be appealed to SC Supreme Court. *The Greenville News*. <https://www.greenvilleonline.com/story/news/2020/01/30/myrtle-beach-civil-forfeiture-case-appealed-state-supreme-court/4587691002/>

## Barriers to Forfeiture Reform

*Policing for Profit's* grades and empirical findings illustrate the need for further forfeiture reform. Indeed, beyond transparency and mostly modest procedural reforms, meaningful change remains elusive—despite demand from the public and political leaders. Public opinion surveys consistently show sizable majorities oppose current forfeiture practices and support reform.<sup>236</sup> In 2016, both major parties' platforms endorsed forfeiture reform.<sup>237</sup> And the sheer volume of reform activity in state legislatures over the past five years indicates interest among lawmakers is both widespread and bipartisan. Yet, repeatedly, substantive reform efforts have been stalled or derailed—usually by law enforcement opposition—despite well-documented abuses.

The past five years have seen several ambitious reform efforts founder. Since 2014, federal lawmakers have repeatedly introduced the Fifth Amendment Integrity Restoration or FAIR Act, most recently in June 2020.<sup>238</sup> The bill would eliminate equitable sharing, raise the federal standard of proof, offer owners new procedural protections and direct forfeiture proceeds to a fund controlled by Congress. Prior versions never made it out of committee. Nor did the more modest Detering Undue Enforcement by Protecting Rights of Citizens from Excessive Searches and Seizures or DUE PROCESS Act.<sup>239</sup> In 2019, amid a larger appropriations debate, the House of Representatives unanimously approved an amendment to defund part of the equitable sharing program. Unfortunately, the Senate refused to accept that amendment, leaving the program untouched.<sup>240</sup> Much the same thing happened in 2017.<sup>241</sup>

As in Congress, stronger state-level reforms have stalled. South Carolina and Minnesota failed to pass bills that would have adopted New Mexico-style reforms to abolish civil forfeiture and end the financial incentive.<sup>242</sup> (The South Carolina Supreme Court may take this decision out of lawmakers' hands. See "South Carolina

High Court Weighs Forfeiture and the Constitution," on p. 55.) Lawmakers in Missouri have repeatedly tried—without success—to close the equitable sharing loophole.<sup>243</sup> Bills in Arizona, Hawaii, Oklahoma and Rhode Island have proposed new conviction provisions, among other reforms, including eliminating the financial incentive in Hawaii and Rhode Island.<sup>244</sup> None made it across the finish line. In 2017, Texas lawmakers filed no fewer than 15 forfeiture reform bills, but not one made it to a floor vote.<sup>245</sup>

A common refrain among reform opponents is that the system is not broken, and any incidents of abuse are isolated. Yet extensive reporting has revealed wide-ranging problems, often concerning the very forfeiture programs reform efforts have failed to touch. In 2014, *The Washington Post's* "Stop and Seize" series identified thousands of warrantless highway seizures through the federal equitable sharing program.<sup>246</sup> *The Greenville News' "TAKEN"* series painstakingly researched three

**A common refrain among reform opponents is that the system is not broken, and any incidents of abuse are isolated. Yet extensive reporting has revealed wide-ranging problems, often concerning the very forfeiture programs reform efforts have failed to touch.**

years' worth of forfeiture cases from across South Carolina, finding hundreds of forfeitures with no conviction or arrest—with most of the proceeds going to law enforcement.<sup>247</sup> As part of the Pulitzer Center's own "TAKEN" series, St. Louis Public Radio produced an in-depth series detailing how Missouri police use equitable sharing to seize cash, circumvent state law and keep the proceeds.<sup>248</sup> Also as part of the Pulitzer series, *The Texas Tribune* published exposés about Texas' forfeiture practices.<sup>249</sup> A 2018 report by Hawaii's legislative auditor

revealed financial mismanagement and other problems in the state's forfeiture program.<sup>250</sup> A news investigation likewise revealed problems in Rhode Island.<sup>251</sup>

Despite such reporting, reform typically falls victim to well-organized law enforcement opposition, whether overt or behind the scenes. Efforts in Texas faced "strident opposition from law enforcement and local prosecutors," while a "quiet lobbying campaign by law enforcement"

stymied reform in Missouri.<sup>252</sup> Opponents in Oklahoma criticized reform as “an affront to law enforcement.”<sup>253</sup> In Minnesota, a lawmaker who is also a county prosecutor converted a bill abolishing civil forfeiture into a study committee. In a move hailed by law enforcement, the committee recommended weak reforms that failed to address the inherent problems with civil forfeiture.<sup>254</sup> Hawaii’s bill passed both houses unanimously but was vetoed by the governor in a move urged by local prosecutors.<sup>255</sup>

Occasionally, reform opponents admit that funding concerns drive their resistance. As the executive director of the South Carolina Sheriff’s Association told *The Greenville News*, if agencies cannot keep forfeiture proceeds, “[W]hat is the incentive to go out and make a special effort?”<sup>256</sup> His question echoes the concerns of the Wisconsin law enforcement officials who fended off a proposal to end their practice of keeping a cut of proceeds to cover costs.<sup>257</sup> Similarly, a deputy sheriff cautioned Minnesota lawmakers that law enforcement needs forfeiture funds for critical purchases.<sup>258</sup> More recently, an Arizona lawmaker defended her vote against a 2020 reform package—despite being aware of abuses—as a way to avoid disrupting needed revenue during the COVID-19 pandemic.<sup>259</sup>

Reformers insist, however, that they are not against law enforcement or adequately funding agencies. Instead, they favor due process and fear reliance on forfeiture funds can erode public confidence in police. As a sponsor of recent reform bills in Minnesota put it, “We have to properly fund local law enforcement. But it’s the Legislature that should be doing the appropriation.”<sup>260</sup>

Thanks in part to Phil Parhamovich’s case, Wyoming prohibited the use of roadside waivers to bully drivers into abandoning property during traffic stops.



## Conclusion and Recommendations

Civil forfeiture is a vast national phenomenon and a fundamental threat to property rights and due process. And while it can be lucrative for law enforcement, there is little evidence to suggest forfeiture effectively meets policy goals of fighting crime or supporting victims and community programs. There is, however, substantial evidence of abuse. Civil forfeiture laws stack the deck against property owners, compromising due process and inevitably sweeping up many innocents. And with transparency lacking, forfeiture activity typically happens outside public view, enabling questionable tactics and spending.

Recent years have seen greater attention and action from lawmakers, but most reforms have been partial measures, leaving civil forfeiture's core deficiencies largely intact. Instead, state and federal lawmakers should pursue more fundamental change.

First, states and the federal government should end civil forfeiture. Its two-track system that separates a person's criminal culpability from their loss of property is inherently abusive. If government is going to forfeit a person's property, it should do so only as part of criminal proceedings with the full panoply of due process protections afforded the accused—in other words, through the one-track process of criminal forfeiture. Lawmakers should be wary of half-measures, such as so-called conviction requirements, that maintain the two-track system and fail to help most property owners caught up in forfeiture proceedings.

Second, states and the federal government should eliminate the perverse financial incentive by directing proceeds to neutral funds, beyond the control of law

enforcement. Enabling agencies to self-fund through forfeiture undermines constitutional and democratic controls and accountability mechanisms, including the separation of powers, while incentivizing the pursuit of property at the expense of justice.

Third, state and federal lawmakers should provide robust protections for innocent third-party owners, making it quick and easy for owners to secure the return of wrongfully seized property—and putting the burden on the government to show owners' personal culpability in order to forfeit.

Fourth, the federal government should abolish equitable sharing, and until it does, states should prohibit their law enforcement agencies from participating in the program. Evidence indicates equitable sharing is not effective as a crime-fighting tool and is prone to abuse—and encourages law enforcement to circumvent state forfeiture law.

Finally, states and the federal government should insist on full transparency and accountability for all forfeiture activity.

New Mexico adopted this reform program in 2015 and, contrary to opponents' predictions, has seen no increase in crime. New Mexico's experience demonstrates that strong protections for property rights and due process are achievable without compromising public safety. The only way to protect against unjust seizures and forfeitures and to ensure law enforcement pursues justice, not property, is to end civil forfeiture and the financial incentive that fuels it.

Law enforcement seized \$53,000 from Eh Wah during a traffic stop. The funds were concert proceeds and donations intended to support Burmese Christian refugees and Thai orphans.





*State Profiles*



# Alabama earns a D- for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by “reasonable satisfaction,” a standard akin to preponderance of the evidence, that property is connected to a crime.
- Limited protections for the innocent: Third-party owners must prove their own innocence to recover seized property, unless real property is at stake.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

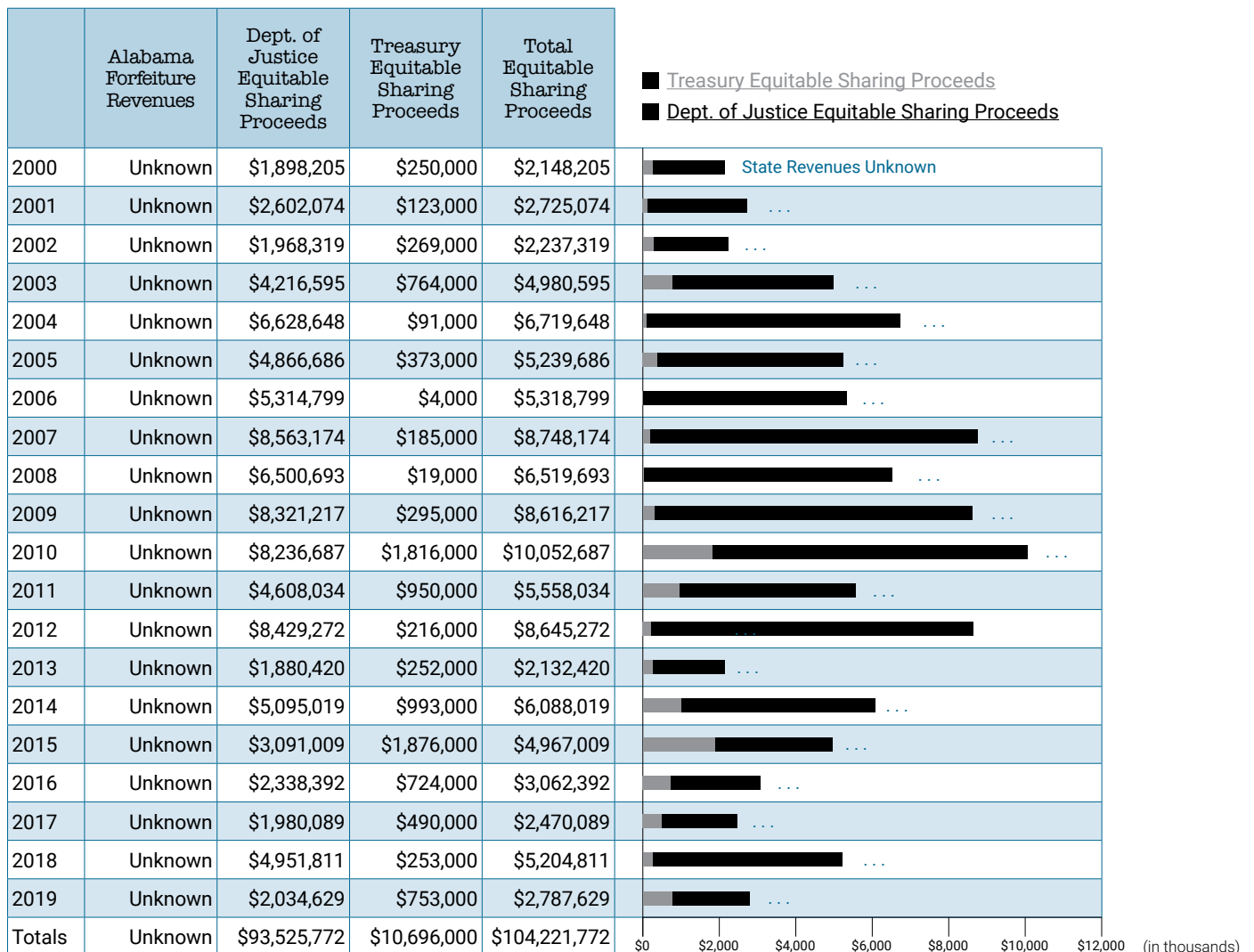
- (2019) SB 191: Adopted new transparency requirements.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2019, Alabama law enforcement agencies generated more than \$104 million in forfeiture revenue from federal equitable sharing. Alabama ranks 36th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$104 million  
in federal forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Alabama's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>B</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	? <sup>†</sup>	Financial Audits of Forfeiture Accounts	<b>F</b>

<sup>†</sup> Statewide reports required by the 2019 reform not yet available.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Alabama Law: Key Facts

### Median Value



Alabama does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Alabama does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Alabama does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Alabama does not report how forfeiture funds are spent.

### Data Notes

No statewide records available. Alabama had no reporting requirements before the reporting law enacted in 2019. Forfeiture data from the reporting system operated by the Alabama Law Enforcement Agency are expected in 2021 from the Alabama Criminal Justice Information Center Commission. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports.

# Alaska earns a D+ for its civil forfeiture laws:

- Low bar to forfeit: Once the government seizes property, the owner must prove by preponderance of the evidence that it is not connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: In general, up to 75% of forfeiture proceeds go to law enforcement; 100% in cases of non-monetary property worth \$5,000 or less.

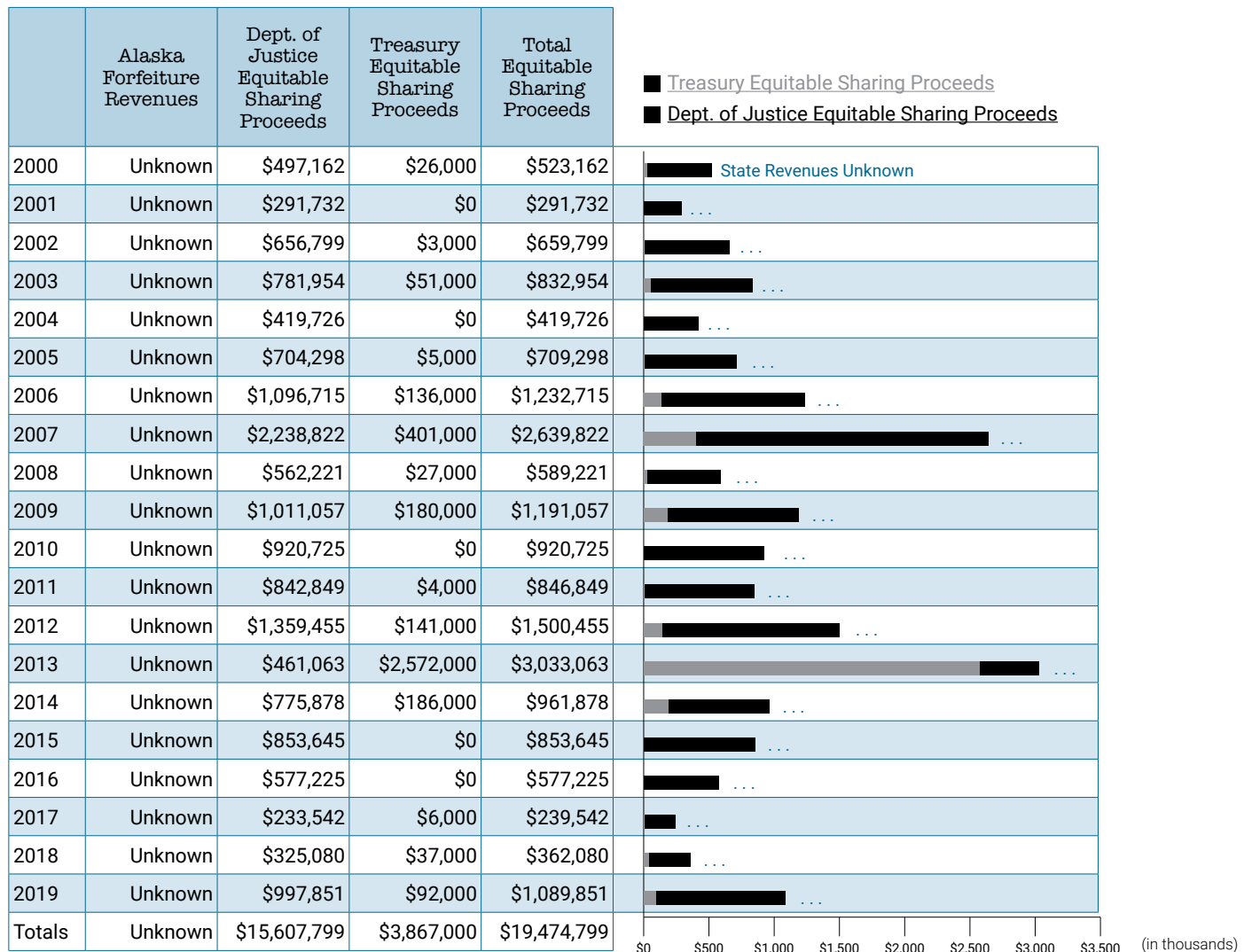
## Recent Reforms

- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2019, Alaska law enforcement agencies generated more than \$19 million in forfeiture revenue from federal equitable sharing. Alaska ranks 15th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$19 million  
in federal forfeiture revenue**  
2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Alaska's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>F</b>	Accessibility of Forfeiture Records	<b>F</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>Incomplete<sup>†</sup></b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

<sup>†</sup> No reporting requirements to enforce.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Alaska Law: Key Facts

### Median Value



Alaska does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Alaska does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Alaska does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Alaska does not report how forfeiture funds are spent.

### Data Notes

No statewide records available. Agencies are not required to report forfeiture activity. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports.

# Arizona earns a **D-** for its civil forfeiture laws:

- Somewhat higher bar to forfeit: Prosecutors must provide clear and convincing evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

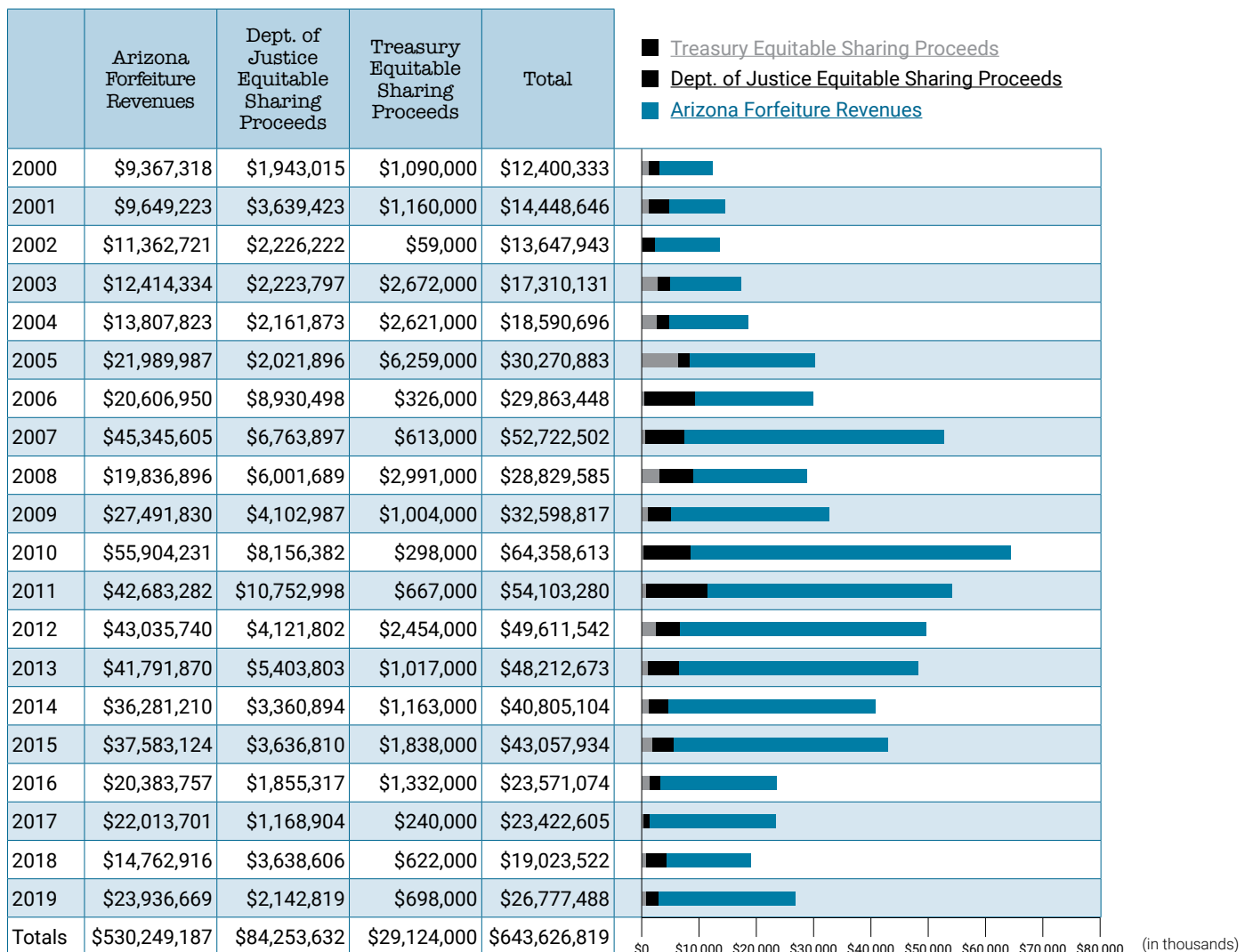
- (2017) HB 2477: Raised standard of proof; imposed new limits on participation in federal equitable sharing; strengthened transparency requirements by adopting IJ’s model reporting legislation; created right to attorney fees for owners and repealed the state’s unique “reverse” attorney fee provision, which forced owners to pay 100% of the government’s attorney fees if the government prevailed on as little as 1% of its case; mandated outside approvals for expenditures of forfeiture proceeds.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2019, Arizona law enforcement agencies forfeited more than \$530 million under state law and generated an additional \$113 million from federal equitable sharing, for a total of at least \$643 million in forfeiture revenue—averaging more than \$32 million a year. Arizona ranks 23rd for its participation in the Department of Justice’s equitable sharing program. However, in 2017, the state prohibited federal forfeiture of locally seized property worth less than \$75,000 for equitable sharing.

**At least \$643 million  
in forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Arizona's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>A+</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>B</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>A</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

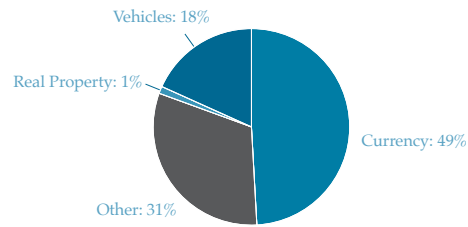
## Forfeitures Under Arizona Law: Key Facts

### Median Value



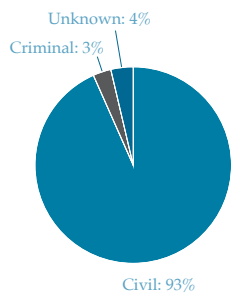
From 2018 to 2019, half of Arizona's currency forfeitures were worth less than \$1,000.

### Property Types



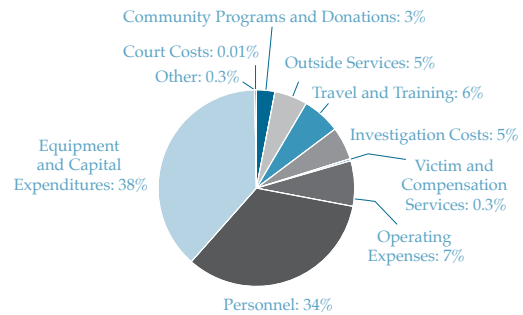
From 2018 to 2019, nearly half of Arizona's forfeitures were of currency.

### Civil vs. Criminal



From 2018 to 2019, at least 93% of forfeited properties were processed under civil, not criminal, forfeiture laws.

### Expenditures



From 2018 to 2019, Arizona law enforcement spent \$42 million from forfeiture funds—more than a third on personnel, including salaries and overtime.

### Data Notes

Records were obtained from the Arizona Criminal Justice Commission website and via public records request to ACJC. Figures for fiscal years 2000 through 2019 represent the total county-level value of forfeited cash and property sold. Data from 2018 and 2019 also include other forfeitures, including the value of retained and destroyed forfeited property. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Arkansas earns a D- for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It does not require conviction of the owner, only of the “person from whom the property was seized,” and the court can waive the provision if the person does not contest the forfeiture or has agreed to help investigators in exchange for immunity. Once the conviction provision is satisfied, property must be linked to the crime by preponderance of the evidence.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement (up to a maximum of \$250,000 from a single forfeiture, 80% to police and prosecutors and 20% to the state Crime Lab Equipment Fund; any amount above \$250,000 goes to the Special State Assets Forfeiture Fund, a non-law enforcement fund).

## Recent Reforms

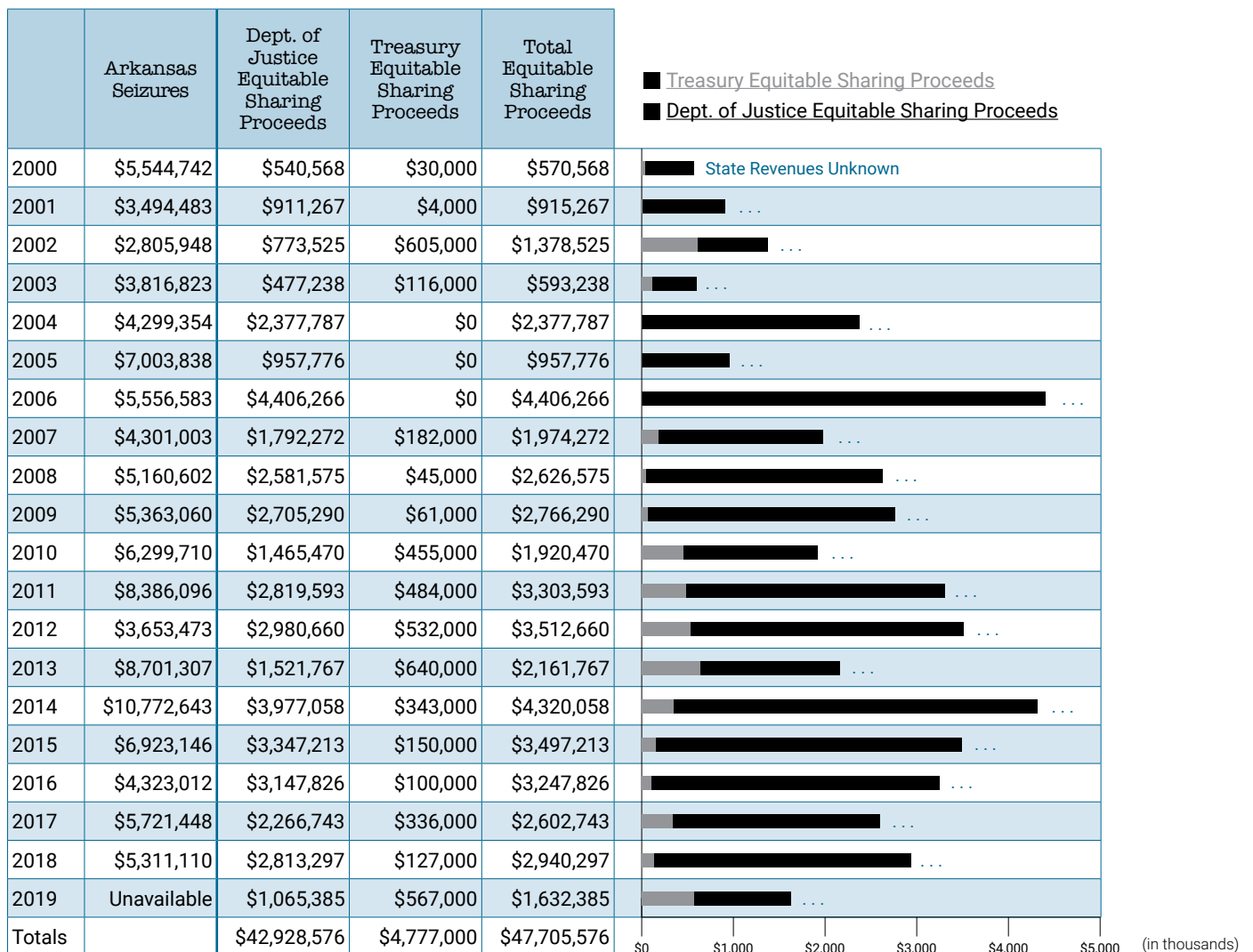
- (2019) SB 308: Created weak conviction provision.

## Value of State Seizures and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, Arkansas law enforcement agencies seized more than \$107 million under state law, although the final amount forfeited is unknown. Between 2000 and 2019, they also generated more than \$47 million in forfeiture proceeds from federal equitable sharing. Arkansas ranks 22nd for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$47 million  
in federal forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Arkansas' Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C-</b>	Accessibility of Forfeiture Records	<b>C</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>B*</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>A</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Arkansas Law: Key Facts

### Median Value



Arkansas does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Arkansas does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Arkansas does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Arkansas does not report how forfeiture funds are spent.

## Data Notes

Calendar-year data representing seizures conducted under the Uniform Controlled Substances Act were obtained via public records requests to the Arkansas Drug Director. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports.



# California earns a C for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It applies only if an owner contests forfeiture, putting the burden on owners to engage in a costly legal battle and making it easy for the government to forfeit without a conviction. It does not require conviction of the owner, only of “a defendant,” and does not apply to cash over \$40,000. Once there is a conviction, property must be linked to the crime beyond a reasonable doubt. The standard for cash over \$40,000 is clear and convincing evidence if contested. For uncontested forfeitures, the government need only present a “prima facie case” that property is subject to forfeiture—a very low standard akin to probable cause.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- Large profit incentive: 76% of forfeiture proceeds go to law enforcement (65% to police, 10% to prosecutors and 1% to a fund controlled by the prosecutors’ trade association).

## Recent Reforms

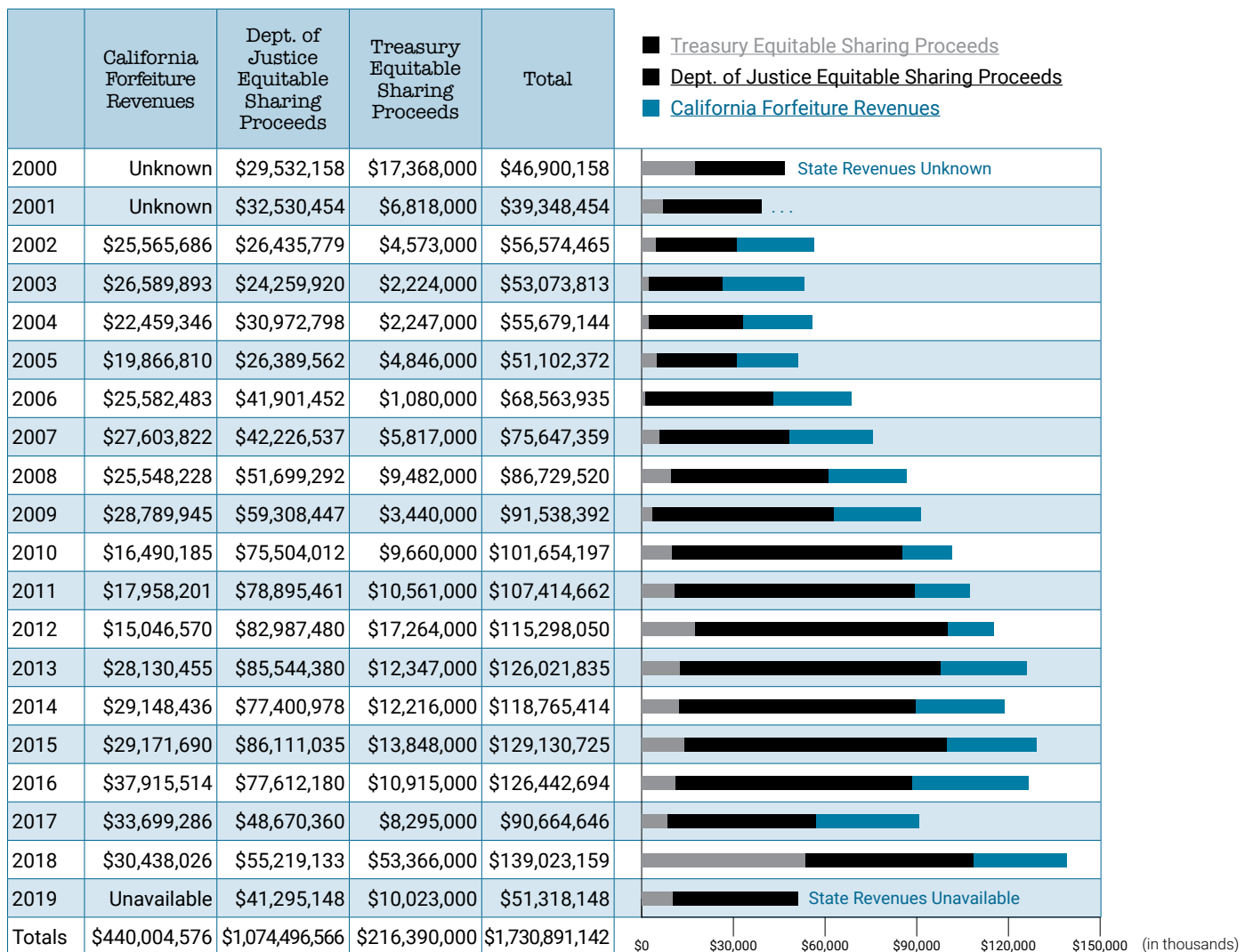
- (2016) SB 443: Raised standard of proof; created weak conviction provision; imposed new limits on participation in federal equitable sharing.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2002 and 2018, California law enforcement agencies forfeited more than \$440 million under state law. Between 2000 and 2019, they generated an additional \$1.3 billion from federal equitable sharing, for a total of at least \$1.7 billion in forfeiture revenue. California ranks 49th for its participation in the Department of Justice’s equitable sharing program. However, in 2016, the state prohibited agencies from receiving federal proceeds unless forfeited property is cash worth more than \$40,000.

**At least \$1.7 billion  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# California's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>D</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>C</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under California Law: Key Facts

### Median Value



California does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

California does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

California does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

California does not report how forfeiture funds are spent.

### Data Notes

Forfeiture reports are from the California Attorney General's website. Figures represent net forfeiture revenues and are based on the calendar year in which revenues were disbursed. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Colorado earns a C for its civil forfeiture laws:

- Somewhat higher bar to forfeit: Prosecutors must provide clear and convincing evidence that property is connected to a crime.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- Large profit incentive: 75% of forfeiture proceeds go to law enforcement (50% to law enforcement directly and 25% to a law enforcement community services fund that funnels proceeds back to law enforcement; the remaining 25% goes to drug rehabilitation programs).

## Recent Reforms

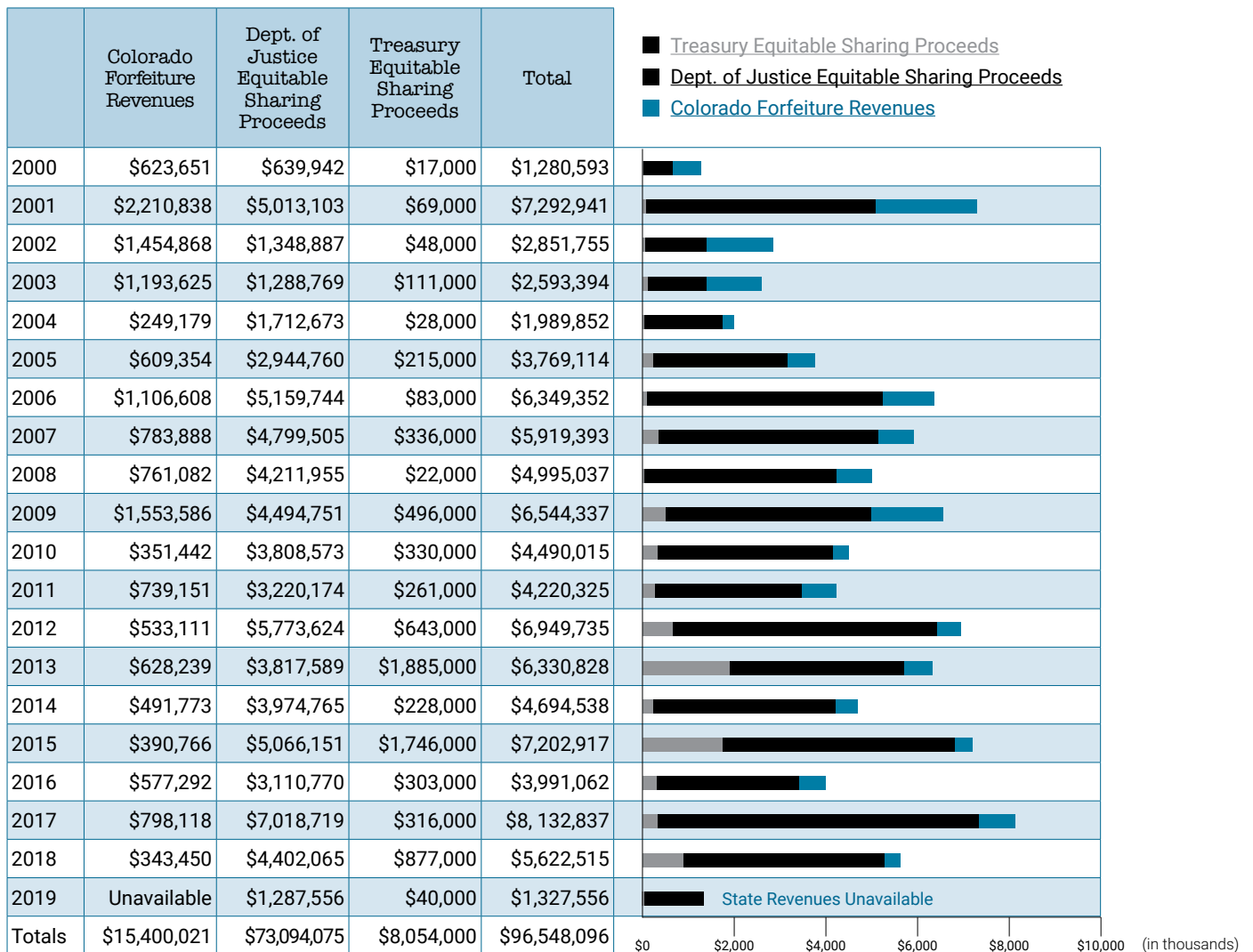
- (2018) HB 18-1020: Extended transparency requirements to cover forfeitures under local ordinances; but also created another grant program, funded by legislative appropriations, to reimburse local agencies for funds they would have received but for the limits on their participation in federal equitable sharing; effectively increased the state's profit incentive from 50% to 75% by creating "community services" grant program, funded in part by forfeiture proceeds, to provide law enforcement agencies with funding for technology and training, among other purposes.
- (2017) HB 17-1313: Imposed new limits on participation in federal equitable sharing; strengthened transparency requirements by adopting IJ's model reporting legislation.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, Colorado law enforcement agencies forfeited more than \$15 million under state law. Between 2000 and 2019, they generated an additional \$81 million from federal equitable sharing, for a total of at least \$96 million in forfeiture revenue. Colorado ranks 39th for its participation in the Department of Justice's equitable sharing program. However, in 2017, the state prohibited agencies from receiving federal proceeds from property worth less than \$50,000.

**At least \$96.5 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation. State reporting requirements changed in 2017.

# Colorado's Forfeiture Transparency and Accountability Report Card

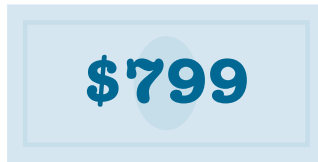
Tracking Seized Property	<b>B</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>C*</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>A</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

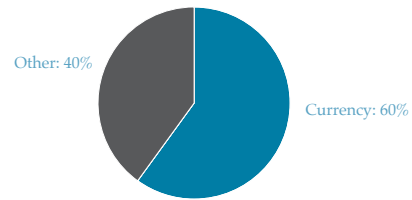
## Forfeitures Under Colorado Law: Key Facts

### Median Value



From 2017 to 2018, half of Colorado's currency forfeitures were worth less than \$799.

### Property Types



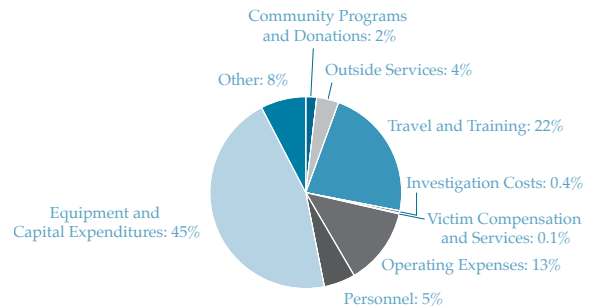
From 2017 to 2018, 60% of Colorado's forfeitures were of currency.

### Civil vs. Criminal

**UNKNOWN**

Colorado does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2017 to 2018, Colorado law enforcement spent \$6 million from forfeiture funds—nearly half on equipment and capital expenditures.

### Data Notes

Forfeiture proceeds for 2000 through 2016 were obtained via public records requests to the Colorado Department of Local Affairs. Property-level proceeds and expenditure data for 2017 through 2018 are from DOLA's website. All figures are in calendar years. Expenditure data cover spending of state and federal funds and cover the 50% of proceeds retained within the agency, excluding mandatory disbursements. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Connecticut earns a C for its civil forfeiture laws:

- Higher bar to forfeit: Moderate conviction provision applies in drug, identity theft and sex-trafficking cases, even if forfeiture is uncontested. It does not require conviction of the owner, only that a “person” be convicted. For other crimes, the owner must be convicted. Once the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- Large profit incentive: In drug cases, 69.5% of forfeiture proceeds go to law enforcement (59.5% to police and 10% to prosecutors); none in all other cases.

## Recent Reforms

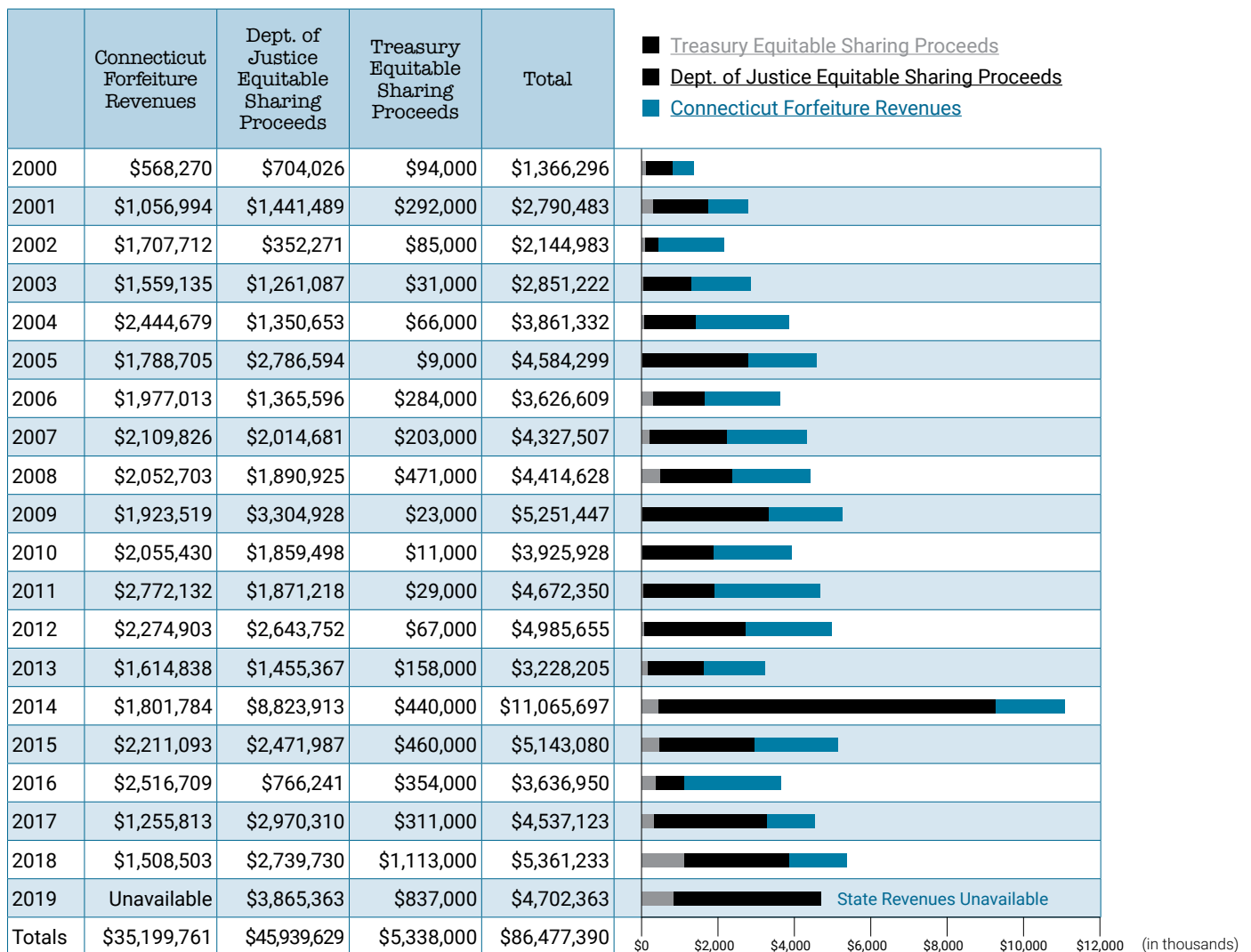
- (2017) HB 7146: Created moderate conviction provision.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, Connecticut law enforcement agencies forfeited more than \$35 million under state law. Between 2000 and 2019, they generated an additional \$51 million from federal equitable sharing, for a total of at least \$86 million in forfeiture revenue. Connecticut ranks 28th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$86 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Connecticut's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>Incomplete<sup>†</sup></b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

<sup>†</sup> No reporting requirements to enforce.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

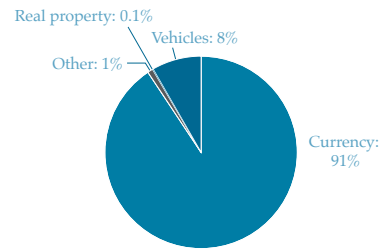
## Forfeitures Under Connecticut Law: Key Facts

### Median Value



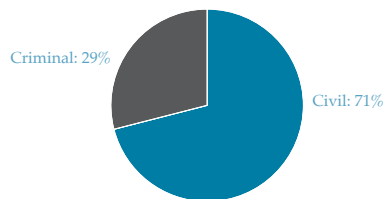
From 2015 to 2018, half of Connecticut's currency forfeitures were worth less than \$665.

### Property Types



From 2000 to 2018, more than nine out of every 10 forfeitures in Connecticut were of currency.

### Civil vs. Criminal



From 2000 to 2015, 71% of forfeited properties were processed under civil, not criminal, forfeiture laws.

### Expenditures

**UNKNOWN**

Connecticut does not report how forfeiture funds are spent.

### Data Notes

Property-level calendar-year proceeds were obtained via public records requests to the Connecticut Chief State's Attorney. Figures represent cash and property sold from forfeitures. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Delaware earns a **D-** for its civil forfeiture laws:

- Low bar to forfeit: Once the government seizes property, the owner must prove by preponderance of the evidence that it is not connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: Up to 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

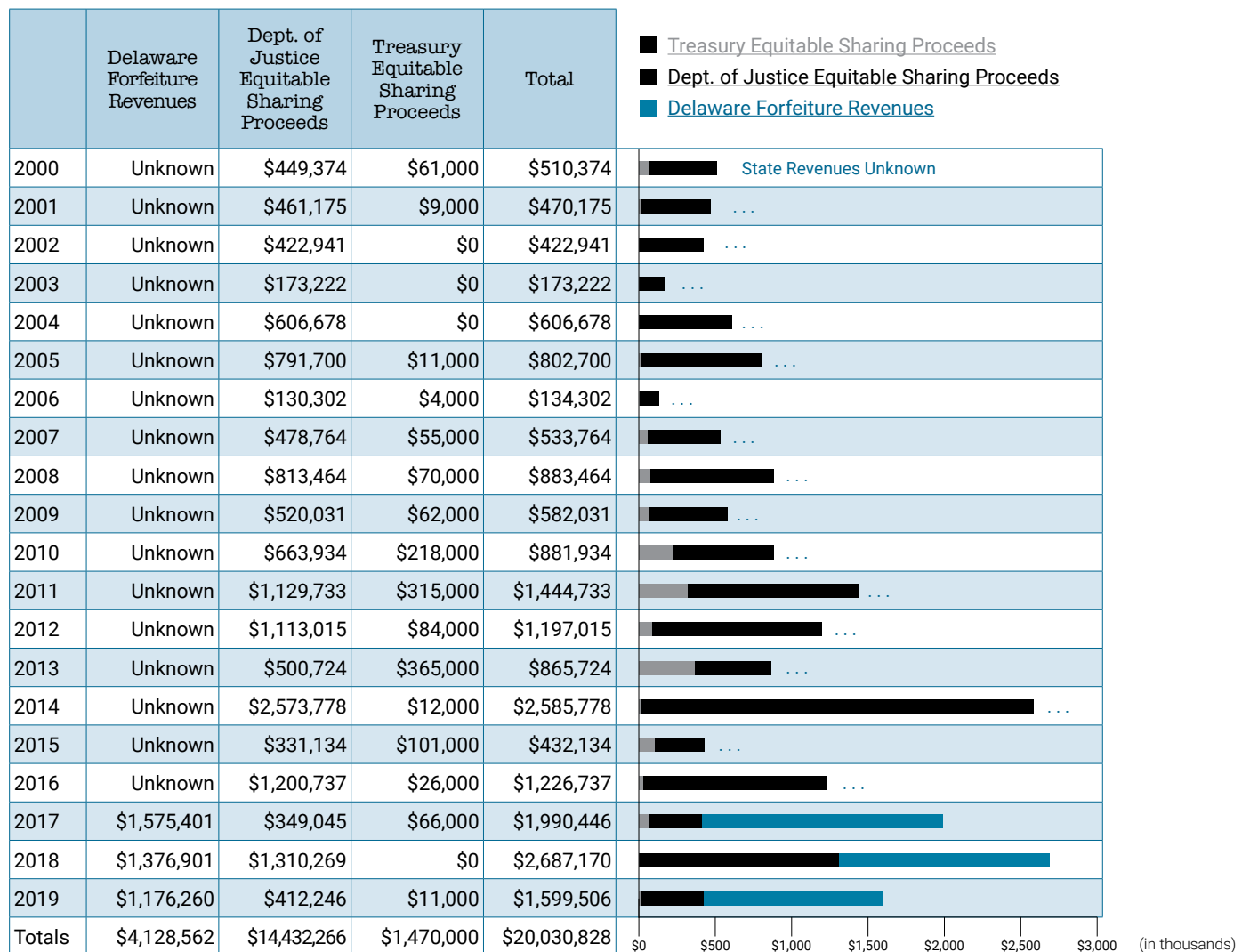
- (2016) HB 309: Made information about the Special Law Enforcement Assistance Fund eligible for release under Freedom of Information Act. Unfortunately, the SLEAF Committee decides which requests to approve. Moreover, Delaware's FOIA does not guarantee access to records for non-citizens of the state.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2017 and 2019, Delaware law enforcement agencies forfeited more than \$4 million under state law. Between 2000 and 2019, they generated an additional \$16 million from federal equitable sharing, for a total of at least \$20 million in forfeiture revenue. Delaware ranks 13th for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$20 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Delaware's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>F</b>	Accessibility of Forfeiture Records	<b>C</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>B</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Delaware Law: Key Facts

### Median Value



Delaware does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Delaware does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Delaware does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Delaware expenditure data were not used for this report.

### Data Notes

Reports of fiscal-year forfeiture deposits to the Special Law Enforcement Assistance Fund were obtained via request to the Delaware Department of Justice. Deposits represent forfeited money and proceeds from sales of forfeited property and exclude interest. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# The District of Columbia earns a **B+** for its civil forfeiture laws:

- Somewhat higher bar to forfeit some property: For motor vehicles, real property and currency up to \$1,000, prosecutors' standard is clear and convincing evidence. A very weak conviction provision requires conviction of the owner when a person's primary residence is at stake. For all other property, the standard is preponderance of the evidence.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- No profit incentive: All forfeiture proceeds go to the general fund.

## Recent Reforms

- None.

## State and Federal Forfeiture Revenues, 2000–2019

From 2010 to 2012 and 2015 to 2018, the D.C. Metropolitan Police Department forfeited nearly \$5 million under District law. Between 2000 and 2019, it generated an additional \$7 million from federal equitable sharing, for a total of at least \$12 million in forfeiture revenue. The District of Columbia ranks 7th for its participation in the Department of Justice's equitable sharing program. In 2015, D.C. prohibited federal adoption of locally seized property for equitable sharing.

**At least \$12 million  
in District and federal  
forfeiture revenue**

2000–2019

	District of Columbia Forfeiture Revenues	Dept. of Justice Equitable Sharing Proceeds	Treasury Equitable Sharing Proceeds	Total	
2000	Unknown	Unavailable	\$228,000	\$228,000	DOJ Proceeds Unavailable District Revenues Unknown
2001	Unknown	Unavailable	\$27,000	\$27,000	...
2002	Unknown	Unavailable	\$70,000	\$70,000	...
2003	Unknown	Unavailable	\$152,000	\$152,000	...
2004	Unknown	Unavailable	\$204,000	\$204,000	...
2005	Unknown	Unavailable	\$124,000	\$124,000	...
2006	Unknown	Unavailable	\$321,000	\$321,000	...
2007	Unknown	Unavailable	\$187,000	\$187,000	...
2008	Unknown	Unavailable	\$171,000	\$171,000	...
2009	Unknown	\$506,882	\$206,000	\$712,882	District Revenues Unknown
2010	\$1,894,278	\$670,749	\$28,000	\$2,593,027	
2011	\$1,271,889	\$531,940	\$63,000	\$1,866,829	
2012	\$1,648,599	\$866,809	\$83,000	\$2,598,408	
2013	Unknown	\$357,847	\$11,000	\$368,847	District Revenues Unknown
2014	Unknown	\$771,427	\$21,000	\$792,427	...
2015	\$15,787	\$385,950	\$2,000	\$403,737	
2016	\$23,518	\$189,247	\$34,000	\$246,765	
2017	\$700	\$673,004	\$77,000	\$750,704	
2018	\$25,996	\$774,868	\$8,000	\$808,864	
2019	Unavailable	Unavailable	\$0	\$0	DOJ Proceeds Unavailable District Revenues Unavailable
<b>Totals</b>	<b>\$4,880,767</b>	<b>\$5,728,723</b>	<b>\$2,017,000</b>	<b>\$12,626,490</b>	

All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation. Different state revenue sources for 2010–2012 and 2015–2018.

# The District of Columbia's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>N/A<sup>†</sup></b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>N/A<sup>†</sup></b>

<sup>†</sup> These grades are not applicable as the District of Columbia does not permit law enforcement agencies to spend forfeiture revenue.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under District of Columbia Law: Key Facts

### Median Value



The District of Columbia does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

The District of Columbia does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

The District of Columbia does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**N/A**

The District of Columbia does not permit law enforcement agencies to spend forfeiture revenue.

### Data Notes

Calendar-year reports for 2010 through 2012 were obtained via public records request to MPD. MPD did not provide records in response to a request for 2013 and 2014 forfeiture records. Fiscal-year records for 2015 through 2018 are from reports on the D.C. Council's Legislative Information Management System website. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, figures may not match aggregate numbers produced by the District or cover the same 12-month period as the federal data.

# Florida earns a C for its civil forfeiture laws:

- Higher bar to forfeit: Prosecutors must prove beyond a reasonable doubt that property is connected to a crime.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- Large profit incentive: Up to 75% of forfeiture proceeds go to law enforcement.

## Recent Reforms

- (2016) SB 1044: Increased government’s filing fee for forfeiture actions to \$1,000 and required government to post a \$1,500 bond payable to owners who win property back; raised standard of proof; required arrest before seizure of most property; increased availability of attorney fees for innocent owners; adopted new transparency requirements; increased judicial and administrative oversight.

## State and Federal Forfeiture Revenues, 2000–2019

From 2009 to 2014 and 2017 to 2018, Florida law enforcement agencies forfeited more than \$392 million under state law. Between 2000 and 2019, they generated an additional \$646 million from federal equitable sharing, for a total of at least \$1 billion in forfeiture revenue. Florida ranks 44th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$1 billion  
in state and federal  
forfeiture revenue**

2000–2019

	Florida Forfeiture Revenues	Dept. of Justice Equitable Sharing Proceeds	Treasury Equitable Sharing Proceeds	Total	
2000	Unknown	\$16,004,502	\$9,027,000	\$25,031,502	State Revenues Unknown
2001	Unknown	\$48,910,328	\$8,765,000	\$57,675,328	...
2002	Unknown	\$15,271,472	\$14,350,000	\$29,621,472	...
2003	Unknown	\$21,911,302	\$5,080,000	\$26,991,302	...
2004	Unknown	\$15,632,236	\$4,648,000	\$20,280,236	...
2005	Unknown	\$18,309,636	\$6,054,000	\$24,363,636	...
2006	Unknown	\$16,006,014	\$10,477,000	\$26,483,014	...
2007	Unknown	\$29,578,608	\$5,878,000	\$35,456,608	...
2008	Unknown	\$34,198,199	\$5,289,000	\$39,487,199	...
2009	\$33,558	\$36,976,546	\$5,148,000	\$42,158,104	...
2010	\$110,356,729	\$24,226,665	\$11,853,000	\$146,436,394	...
2011	\$195,744	\$37,430,257	\$5,114,000	\$42,740,001	...
2012	\$1,485,135	\$52,064,672	\$8,369,000	\$61,918,807	...
2013	\$1,435,659	\$22,665,566	\$4,878,000	\$28,979,225	...
2014	\$3,563,601	\$17,045,912	\$19,828,000	\$40,437,513	...
2015	Unknown	\$17,127,331	\$11,619,000	\$28,746,331	State Revenues Unknown
2016	Unknown	\$16,894,650	\$6,084,000	\$22,978,650	...
2017	\$28,955,458	\$14,905,901	\$3,174,000	\$47,035,359	...
2018	\$246,170,285	\$14,875,107	\$4,947,000	\$265,992,392	...
2019	Unavailable	\$15,150,002	\$10,736,000	\$25,886,002	State Revenues Unavailable
<b>Totals</b>	<b>\$392,196,169</b>	<b>\$485,184,906</b>	<b>\$161,318,000</b>	<b>\$1,038,699,075</b>	

All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation. Different state revenue sources for 2009–2014 and 2017–2018.

# Florida's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>C*</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Florida Law: Key Facts

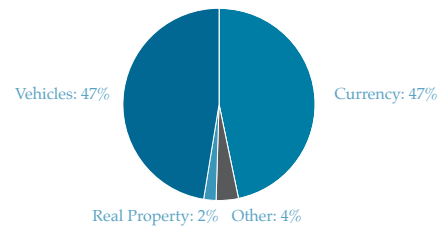
### Median Value



From 2017 to 2018, half of Florida's currency forfeitures were worth less than \$4,500.

Florida's filing fee and bond requirement for law enforcement make forfeitures under \$2,500 riskier, likely encouraging a focus on higher-value property.

### Property Types



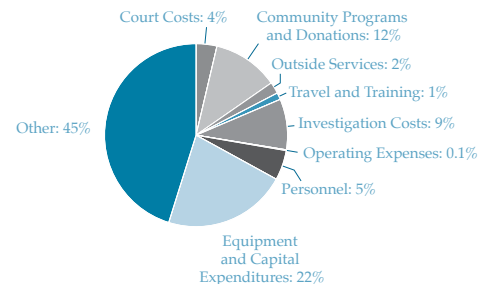
From 2017 to 2018, nearly all of Florida's forfeitures were split between vehicles and currency.

### Civil vs. Criminal

**UNKNOWN**

Florida does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2017 to 2018, Florida law enforcement spent \$74 million from forfeiture funds—45% on "other" expenses, mostly indiscernible or blank in reports.

### Data Notes

Property- and agency-level forfeiture data were obtained via public records requests to the Florida Department of Law Enforcement. Figures for 2009 through 2014 represent proceeds only for FDLE rather than for agencies statewide, while figures for 2017 and 2018 represent all Florida agencies' revenue, excluding interest. FDLE did not provide records in response to a request for 2015 and 2016 forfeiture records. The percentage of reported vehicles may include additional types of conveyances. Expenditures may include mandatory community program spending of 25% of forfeiture proceeds. All figures are in fiscal years. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Georgia earns a D- for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property. And innocent owner claims are barred in cases involving a jointly owned vehicle.
- Large profit incentive: Up to 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

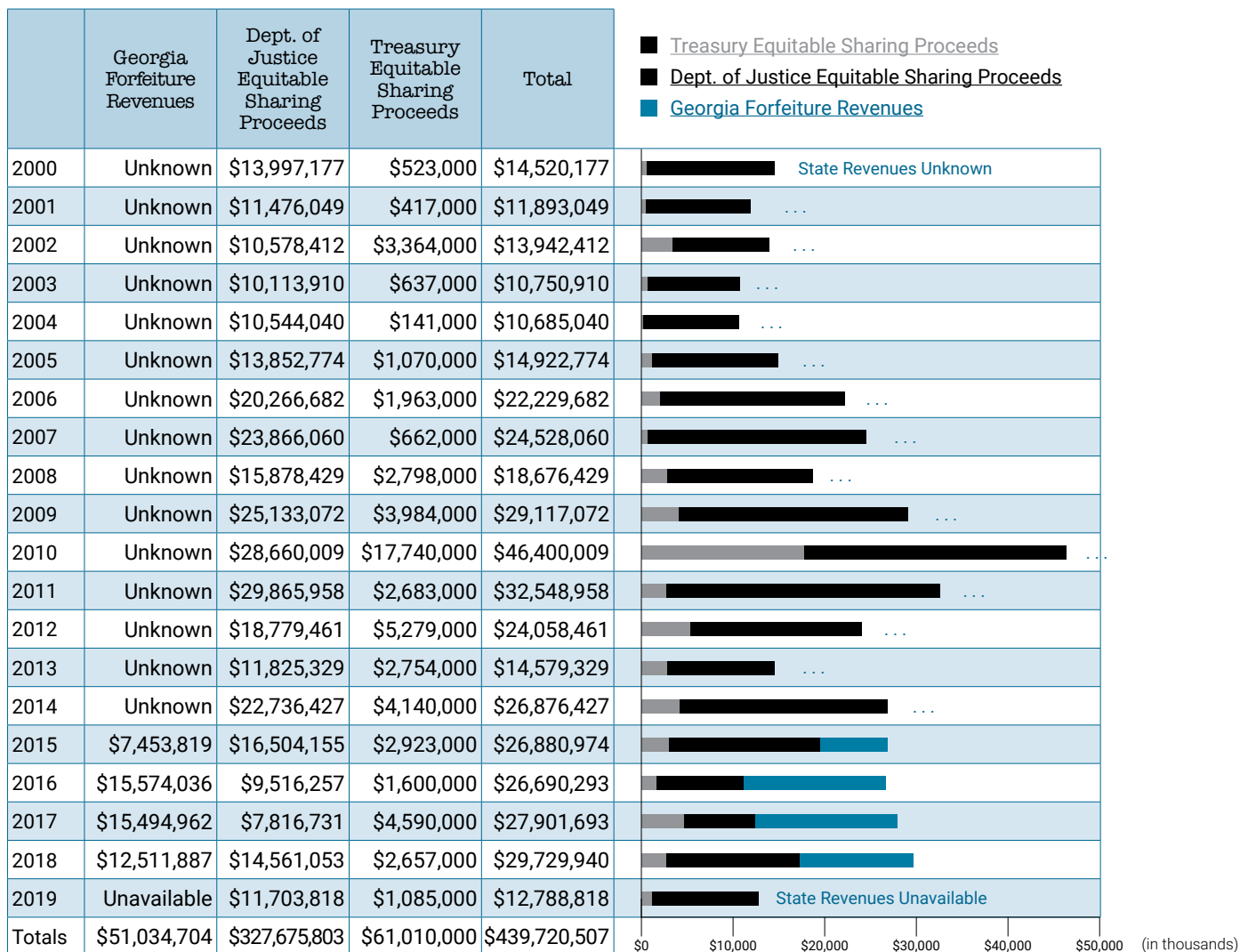
- None

## State and Federal Forfeiture Revenues, 2000–2019

Between 2015 and 2018, Georgia law enforcement agencies forfeited more than \$51 million under state law. Between 2000 and 2019, they generated an additional \$388 million from federal equitable sharing, for a total of at least \$439 million in forfeiture revenue. Georgia ranks 43rd for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$439 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Georgia's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>A</b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>C</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

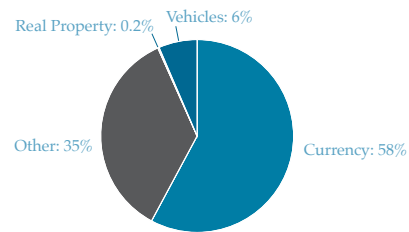
## Forfeitures Under Georgia Law: Key Facts

### Median Value



From 2015 to 2018, half of Georgia's currency forfeitures were worth less than \$540.

### Property Types



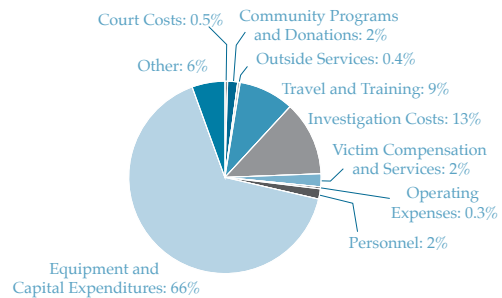
From 2015 to 2018, 58% of Georgia's forfeitures were of currency.

### Civil vs. Criminal

**UNKNOWN**

Georgia does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2015 to 2018, Georgia law enforcement spent \$37 million from forfeiture funds—two-thirds on equipment and capital expenditures.

### Data Notes

Property-level data were obtained via public records requests to the Prosecuting Attorneys' Council of Georgia. Figures represent total value of forfeited property and are in calendar years. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Hawaii earns a D- for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement (up to a maximum of \$3 million per year, 25% to police, 25% to prosecutors and 50% to the attorney general for law enforcement projects).

## Recent Reforms

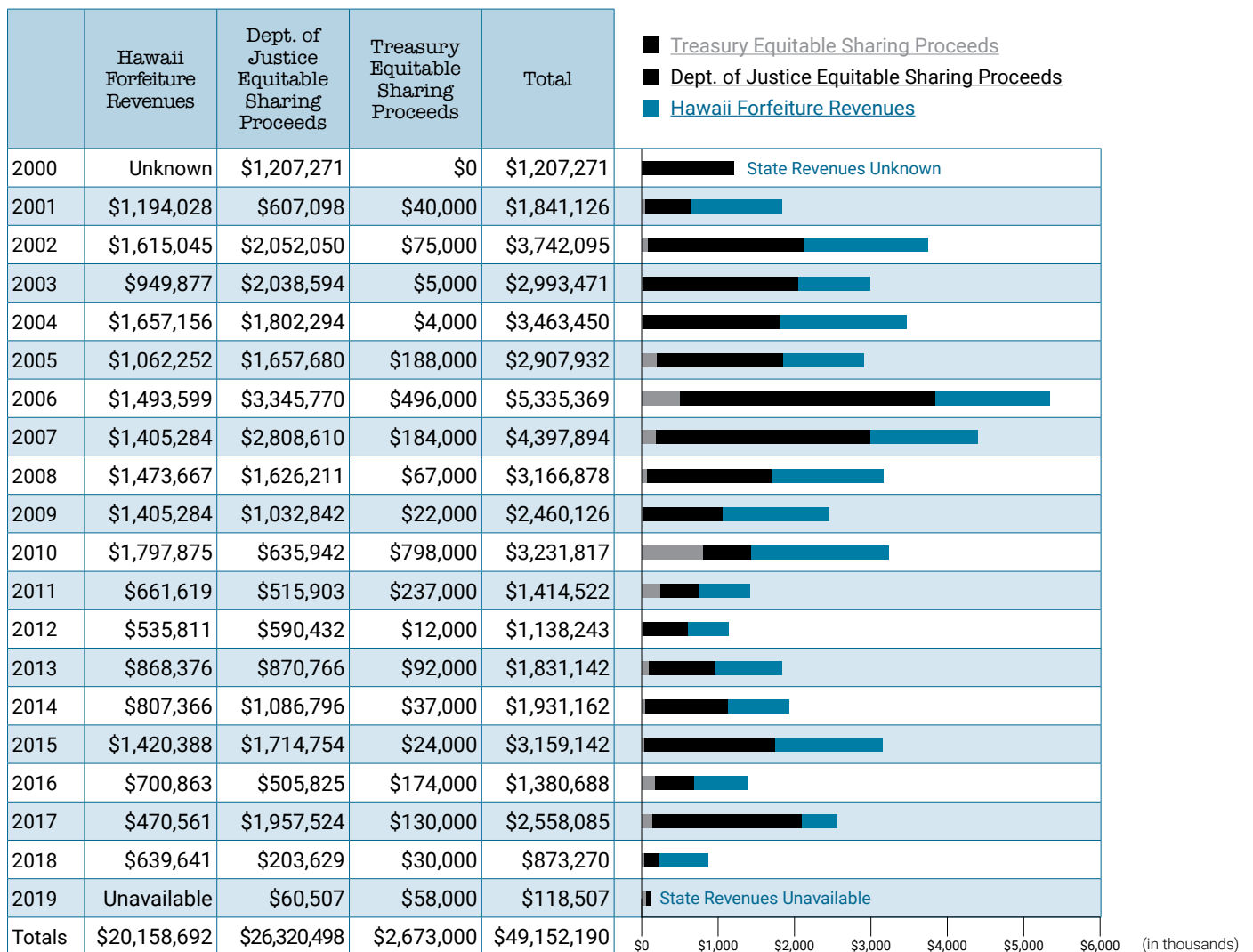
- None

## State and Federal Forfeiture Revenues, 2000–2019

Between 2001 and 2018, Hawaii law enforcement agencies forfeited more than \$20 million under state law. Between 2000 and 2019, they generated an additional \$29 million from federal equitable sharing, for a total of at least \$49 million in forfeiture revenue. Hawaii ranks 26th for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$49 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Hawaii's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Hawaii Law: Key Facts

### Median Value



Hawaii does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

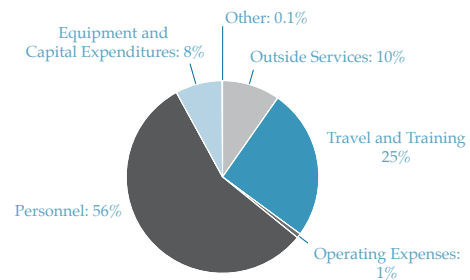
Hawaii property type data were not used for this report.

### Civil vs. Criminal

**UNKNOWN**

Hawaii does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2001 to 2018, the Hawaii Attorney General spent \$6 million from forfeiture funds—56% on personnel, including salaries and overtime.

### Data Notes

Figures are from annual reports obtained from the Hawaii AG's website and represent fiscal-year forfeiture proceeds. Expenditures represent only the AG's Criminal Forfeiture Fund, which receives half of all proceeds. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# Idaho earns a D- for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: Up to 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

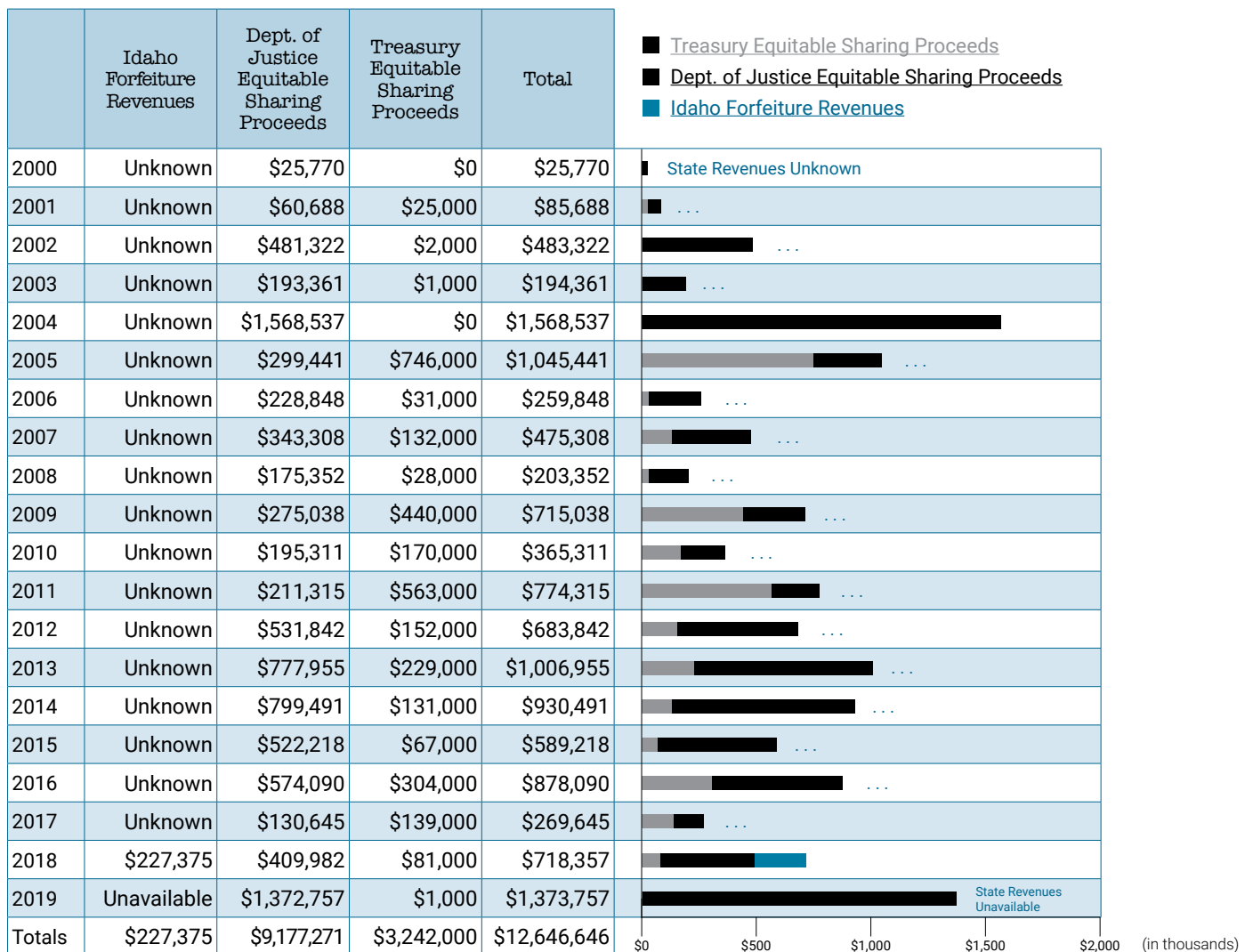
- (2018) HB 447: Adopted new transparency requirements; allowed owners to continue using property during pending forfeiture actions; banned vehicle forfeitures for minor drug possession; allowed courts to reject or reduce forfeitures they deem excessive or disproportionate.

## State and Federal Forfeiture Revenues, 2000–2019

In 2018, Idaho law enforcement agencies forfeited more than \$227,000 under state law. Between 2000 and 2019, they generated an additional \$12.4 million from federal equitable sharing, for a total of at least \$12.6 million in forfeiture revenue. Idaho ranks 5th for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$12.6 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Idaho's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C+</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

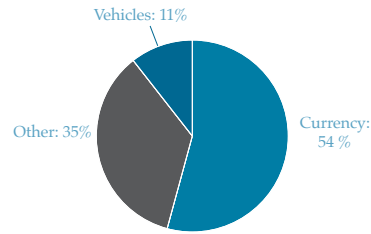
## Forfeitures Under Idaho Law: Key Facts

### Median Value



In 2018, half of Idaho's reported currency forfeitures were worth less than \$1,200.

### Property Types



In 2018, 54% of Idaho's reported forfeitures were of currency.

### Civil vs. Criminal

UNKNOWN

Idaho does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

UNKNOWN

Idaho does not report how forfeiture funds are spent.

### Data Notes

Reports were obtained via public records requests to each county prosecuting attorney. Ten of the 44 counties did not respond to requests. Figures represent value of forfeited property. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Illinois earns a D- for its civil forfeiture laws:

- Low bar to forfeit in most cases: In general, prosecutors’ standard is preponderance of the evidence. If a related criminal case results in acquittal or non-indictment, the standard is clear and convincing evidence. Forfeiture is not permitted for currency under \$500 in drug cases and under \$100 in all other cases.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property at pretrial hearings.
- Large profit incentive: 90% of forfeiture proceeds go to law enforcement.

## Recent Reforms

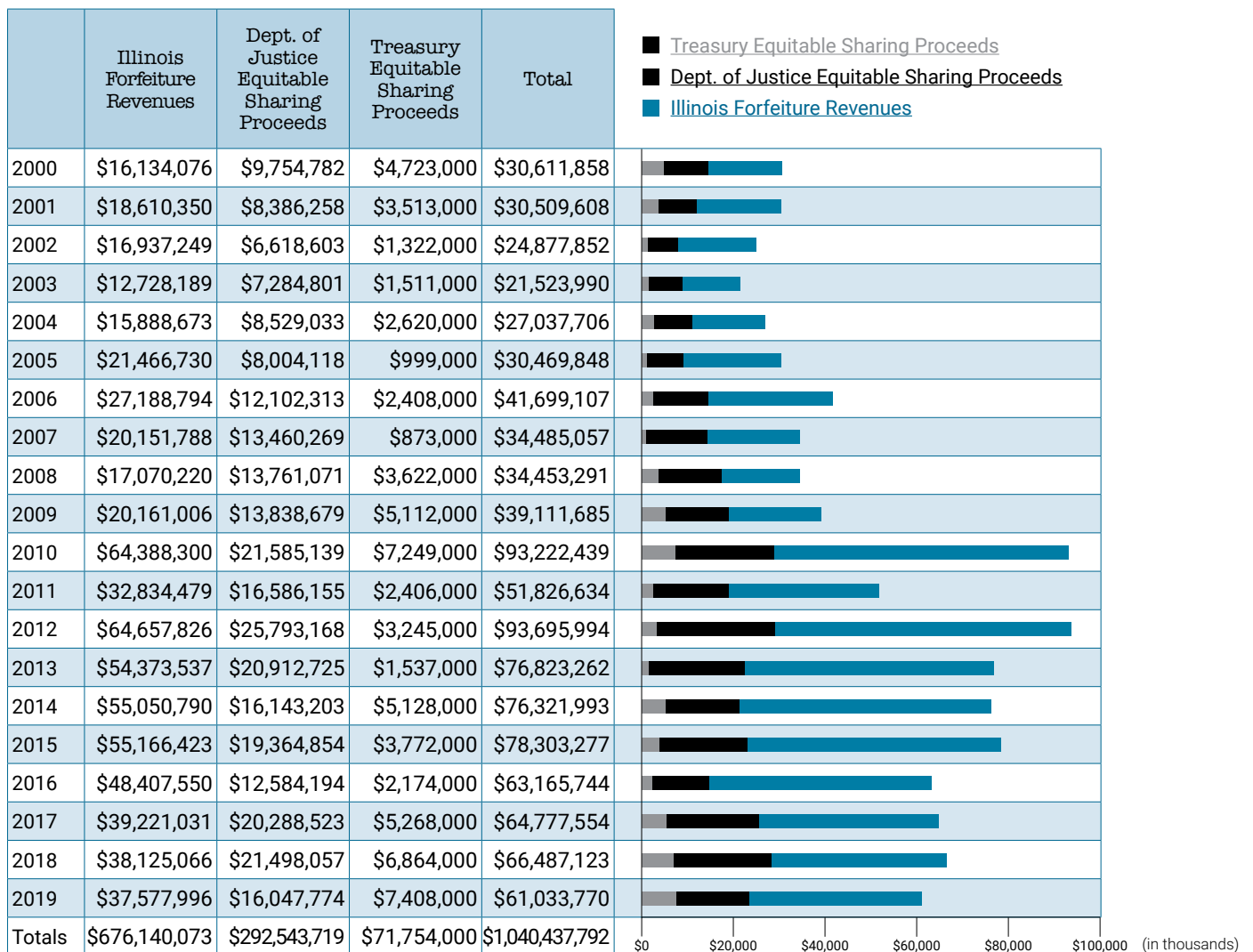
- (2017) HB 303: Removed burden on owners to prove property is not subject to forfeiture; required government to prove owners’ culpability or negligence—which is not a crime—at forfeiture trial, though innocent owners still bear the burden of proving their own innocence at pretrial innocent owner hearings; eliminated bond requirement for owners challenging administrative forfeiture; strengthened transparency requirements.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2019, Illinois law enforcement agencies forfeited more than \$676 million under state law and generated an additional \$364 million from federal equitable sharing, for a total of at least \$1 billion in forfeiture revenue—averaging more than \$50 million a year. Illinois ranks 46th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$1 billion  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Illinois' Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>C</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>A</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

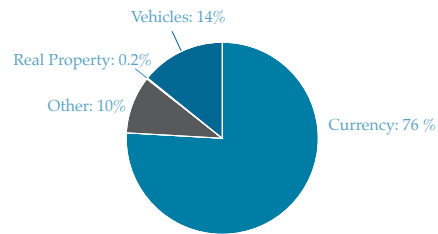
## Forfeitures Under Illinois Law: Key Facts

### Median Value



From 2015 to 2019, half of Illinois' currency forfeitures were worth less than \$755.

### Property Types



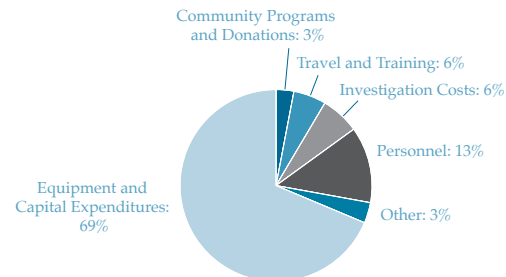
From 2010 to 2019, more than three-quarters of Illinois' forfeitures were of currency.

### Civil vs. Criminal

UNKNOWN

Illinois does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



In 2019, Illinois law enforcement spent \$14 million from forfeiture funds—mostly on equipment, capital expenditures and operating expenses.

### Data Notes

Property-level forfeiture proceeds data were obtained through public records requests to the Illinois State Police. Figures for 2000 through 2009 are in calendar years, while those for 2010 through 2019 are in fiscal years. 2019 covers thirteen months, July 2018 through July 2019. Expenditure data for calendar-year 2019 are from ISP's website. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Indiana earns a D for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Limited protections for the innocent: Generally, third-party owners must prove their own innocence to recover seized property, but the government bears the burden in cases involving vehicles or recording equipment allegedly used in a sex crime.
- Large profit incentive: Up to 93% of forfeiture proceeds go to law enforcement.

## Recent Reforms

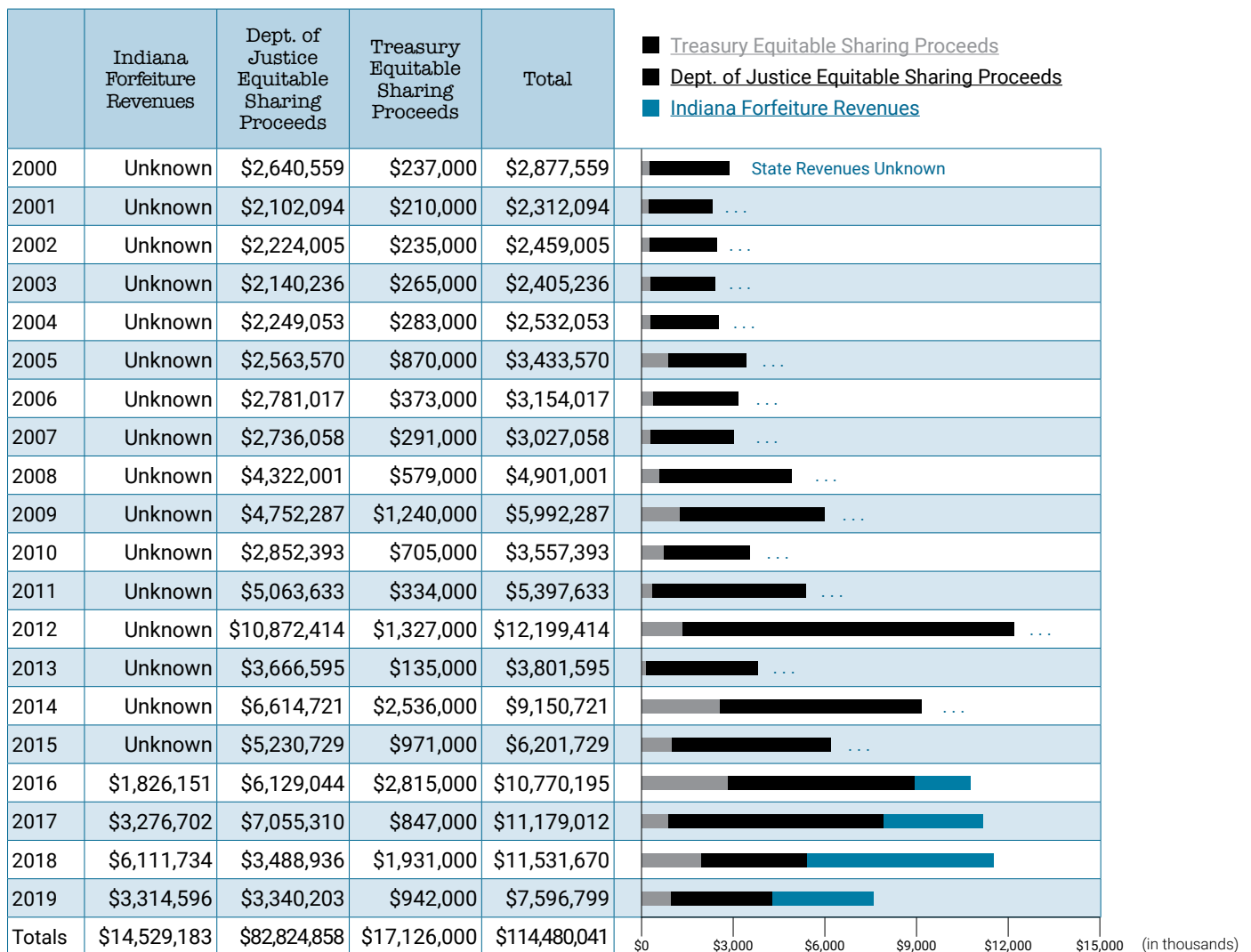
- (2018) SB 99: Made minor changes to prosecutors' deadlines and forfeiture process; allowed innocent owners to petition for provisional release of a vehicle or real property during pending forfeiture actions; required prosecutors to report more details of forfeitures to the Indiana Prosecuting Attorneys Council; but also codified the state's practice of allowing law enforcement to keep nearly all forfeiture proceeds for expenses despite a state constitutional provision requiring that "all forfeitures" be paid into the Common School Fund. In 2019, the Indiana Supreme Court upheld the new law, effectively raising the state's profit incentive from 0% to as much as 93%.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2016 and 2019, Indiana law enforcement agencies forfeited more than \$14 million under state law. Between 2000 and 2019, they generated an additional \$100 million from federal equitable sharing, for a total of at least \$114 million in forfeiture revenue. Indiana ranks 33rd for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$114 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Indiana's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F*</b>
Statewide Forfeiture Reports	<b>C</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Indiana Law: Key Facts

### Median Value



Indiana does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Indiana does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Indiana does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Indiana does not report how forfeiture funds are spent.

### Data Notes

Property-level forfeiture proceeds data were obtained from the Indiana General Assembly website and via public records requests to the Indiana Prosecuting Attorneys Council. Figures are in fiscal years and represent forfeited cash and proceeds from sales of forfeited property. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Iowa earns a D- for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It applies only if an owner contests forfeiture, putting the burden on owners to engage in a costly legal battle and making it easy for the government to forfeit without conviction. It does not require conviction of the owner, only of any person, and does not apply to property valued above \$5,000. Once the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

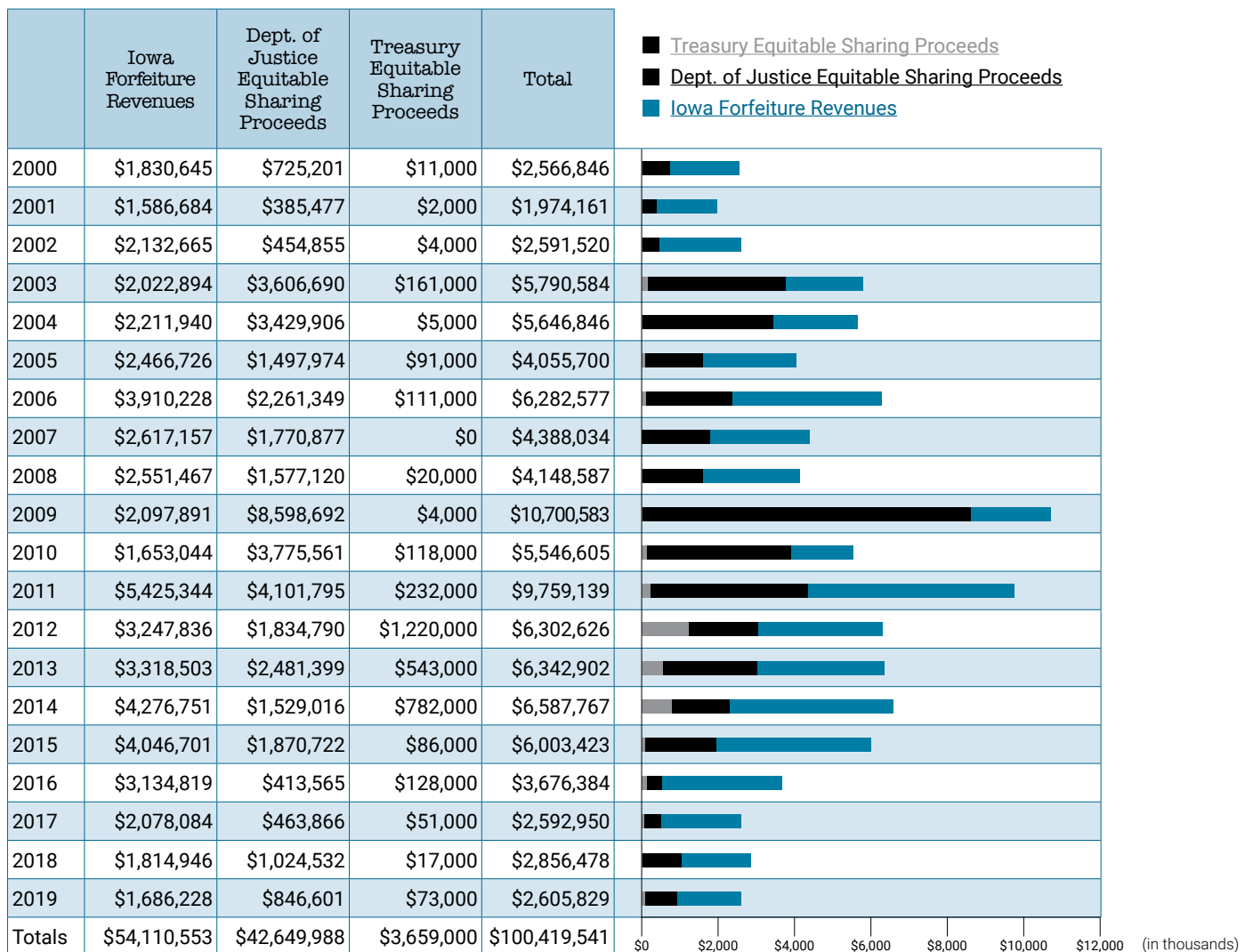
- (2017) SF 446: Raised standard of proof; created weak conviction provision; shifted burden of proof from innocent owners to government; adopted new transparency requirements.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2019, Iowa law enforcement agencies forfeited more than \$54 million under state law and generated an additional \$46 million from federal equitable sharing, for a total of at least \$100 million in forfeiture revenue—averaging more than \$5 million a year. Iowa ranks 8th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$100 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

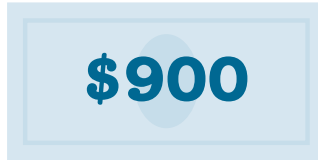
# Iowa's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

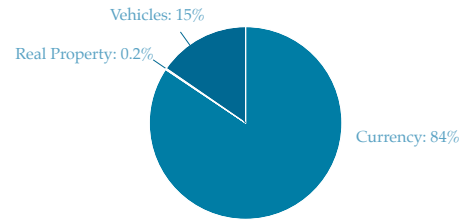
## Forfeitures Under Iowa Law: Key Facts

### Median Value



From 2015 to 2019, half of Iowa's currency forfeitures were worth less than \$900.

### Property Types



From 2000 to 2019, more than eight out of every 10 forfeitures in Iowa were of currency.

### Civil vs. Criminal

**UNKNOWN**

Iowa does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Iowa expenditure data were not used for this report.

### Data Notes

Property-level forfeiture proceeds data were obtained from the state of Iowa's data portal and via public records request to the Iowa Attorney General. Proceeds are in fiscal years and represent only forfeited money and sales of real property. The AG does not track other property. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# Kansas earns a D- for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

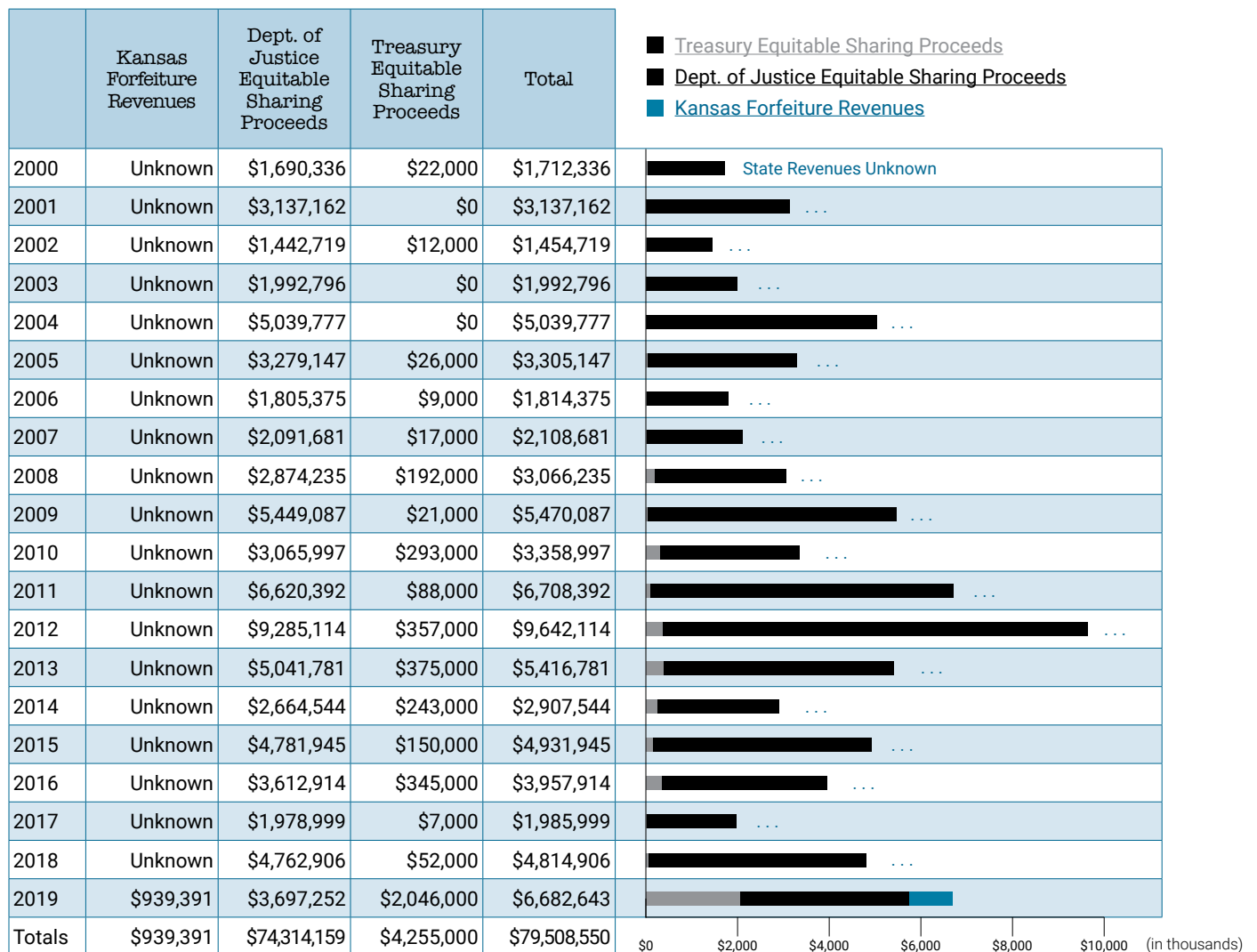
- (2018) HB 2459: Adopted IJ's model reporting legislation, giving Kansas one of the best forfeiture transparency laws in the country.

## State and Federal Forfeiture Revenues, 2000–2019

In the second half of 2019, Kansas law enforcement agencies forfeited more than \$939,000 under state law. Between 2000 and 2019, they generated an additional \$78 million from federal equitable sharing, for a total of at least \$79 million in forfeiture revenue. Kansas ranks 29th for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$79 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Kansas' Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>A-</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>B*</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

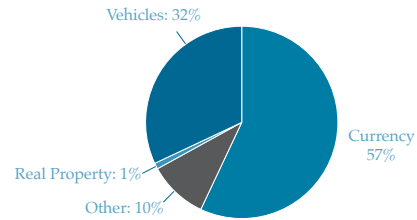
## Forfeitures Under Kansas Law: Key Facts

### Median Value



In the second half of 2019, half of Kansas' currency forfeitures were worth less than \$2,591 per case.

### Property Types



In the second half of 2019, 57% of Kansas' forfeitures were of currency.

### Civil vs. Criminal

**UNKNOWN**

Kansas does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Kansas expenditure data were not used for this report.

### Data Notes

Case-level data are from the Kansas Bureau of Investigation website. Because the state's reporting requirements are new, only a limited time frame of data was available. Figures represent July 2019 through December 2019. Counts and median figures represent case-level forfeitures. Figures are based on the calendar year in which revenues were disbursed. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state and do not cover the same time period as the federal data.

# Kentucky earns a D- for its civil forfeiture laws:

- Low bar to forfeit most property: In general, prosecutors’ standard is akin to probable cause (“slight evidence of traceability” to a crime), and the owner must prove by clear and convincing evidence that property is not connected to a crime. For real property, prosecutors’ standard is clear and convincing evidence.
- Limited protections for the innocent: Third-party owners must prove their own innocence to recover seized property, unless real property is at stake.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement (85% to the seizing agencies and 15% to the Office of the Attorney General or the Prosecutors Advisory Council).

## Recent Reforms

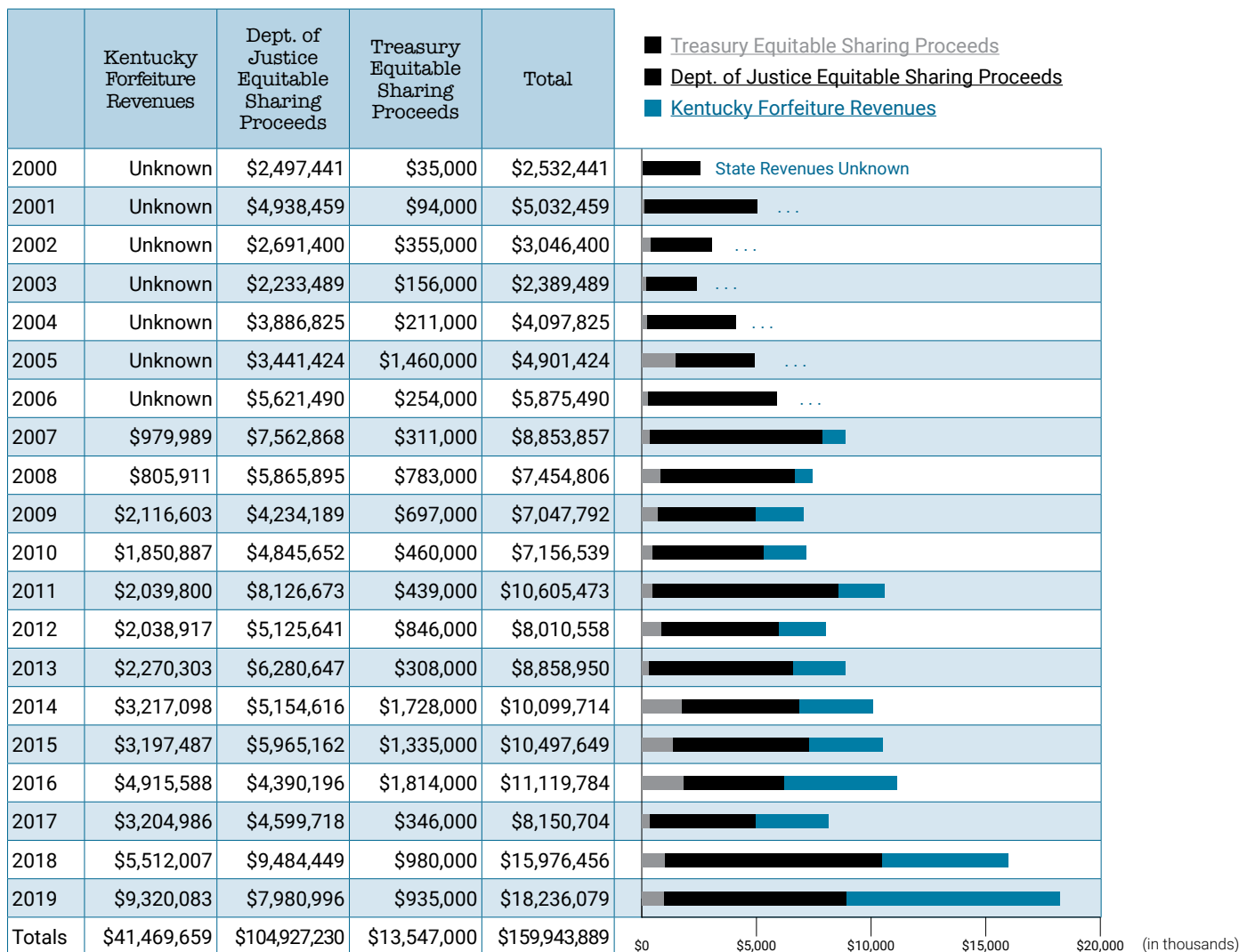
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2007 and 2019, Kentucky law enforcement agencies forfeited more than \$41 million under state law. Between 2000 and 2019, they generated an additional \$118 million from federal equitable sharing, for a total of at least \$159 million in forfeiture revenue. Kentucky ranks 35th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$159 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Kentucky's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D-</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>B</b>
Statewide Forfeiture Reports	<b>C</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Kentucky Law: Key Facts

### Median Value



Kentucky does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Kentucky does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Kentucky does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Kentucky does not report how forfeiture funds are spent.

### Data Notes

Agency-level forfeiture proceeds data were obtained via public records requests to the Kentucky Office of Drug Control Policy. Historically, only a handful of agencies regularly submitted required reports to ODCP. Between 2014 and 2018, the number of reporting agencies more than doubled. Increased compliance with reporting requirements likely accounts for the large jump in forfeiture proceeds in recent years. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Louisiana earns a D+ for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 80% of forfeiture proceeds go to law enforcement (60% to the seizing agencies and 20% to the prosecuting district attorneys' offices; the remaining 20% goes to the criminal court fund).

## Recent Reforms

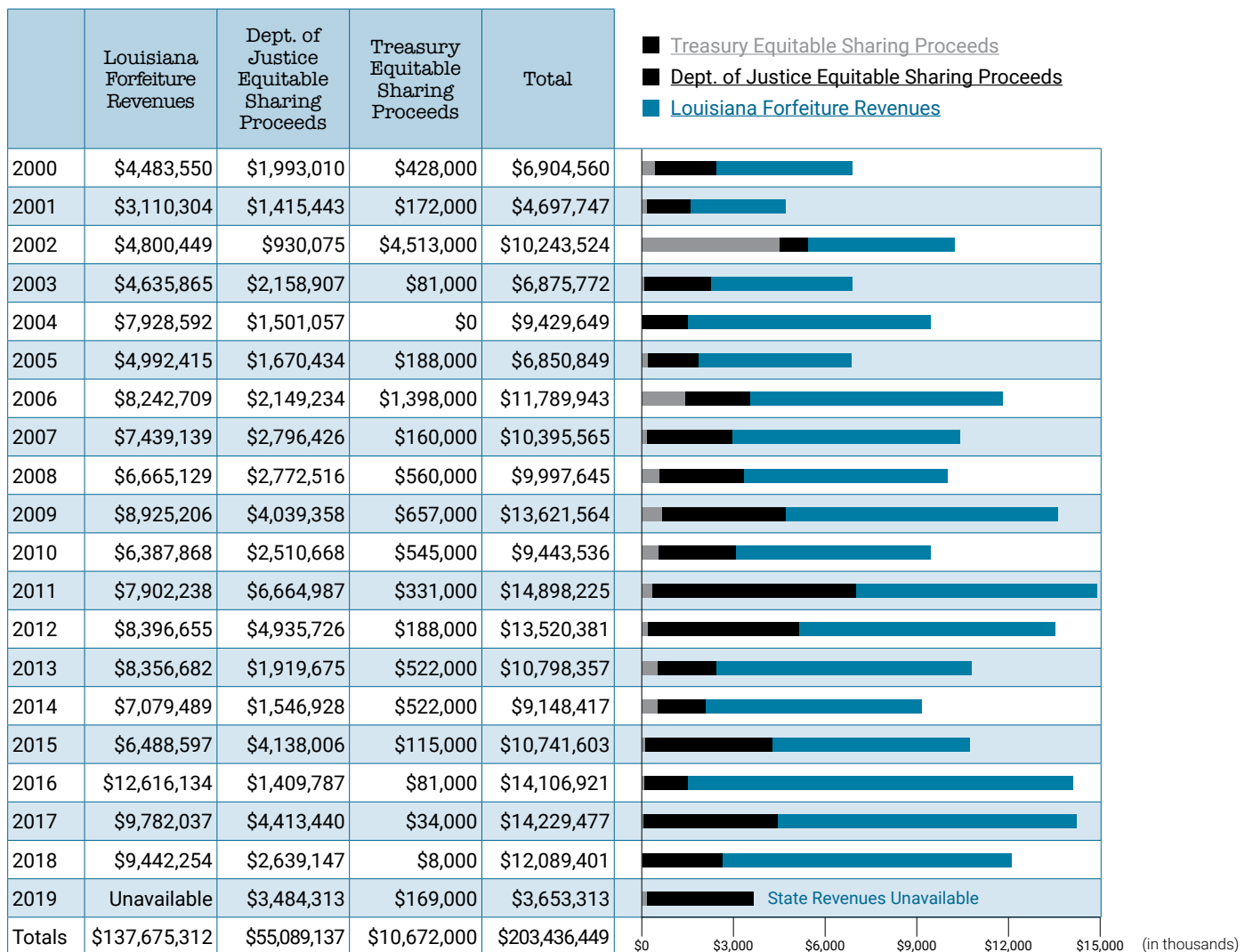
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, Louisiana law enforcement agencies forfeited more than \$137 million under state law. Between 2000 and 2019, they generated an additional \$66 million from federal equitable sharing, for a total of at least \$203 million in forfeiture revenue. Louisiana ranks 21st for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$203 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Louisiana's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>F</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>D</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Louisiana Law: Key Facts

### Median Value



Louisiana does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Louisiana does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Louisiana does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Louisiana does not report how forfeiture funds are spent.

### Data Notes

Forfeiture proceeds reports were obtained via public records requests to the Louisiana Attorney General and Governor. The calendar-year figures represent cash and property sold. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Maine earns a B+ for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Limited protections for the innocent: Third-party owners must prove their own innocence to recover seized property, unless a family’s primary residence is at stake.
- No profit incentive, officially: All forfeiture proceeds are supposed to go to the general fund unless another transfer is specifically approved. However, reports indicate that almost no proceeds go to the general fund. (See, e.g., Neumann, D. (2018, Oct. 26). Maine law enforcement is keeping drug bust money meant for state general fund. *Maine Beacon*. <https://mainebeacon.com/maine-law-enforcement-is-keeping-drug-bust-money-meant-for-state-general-fund/>.)

## Recent Reforms

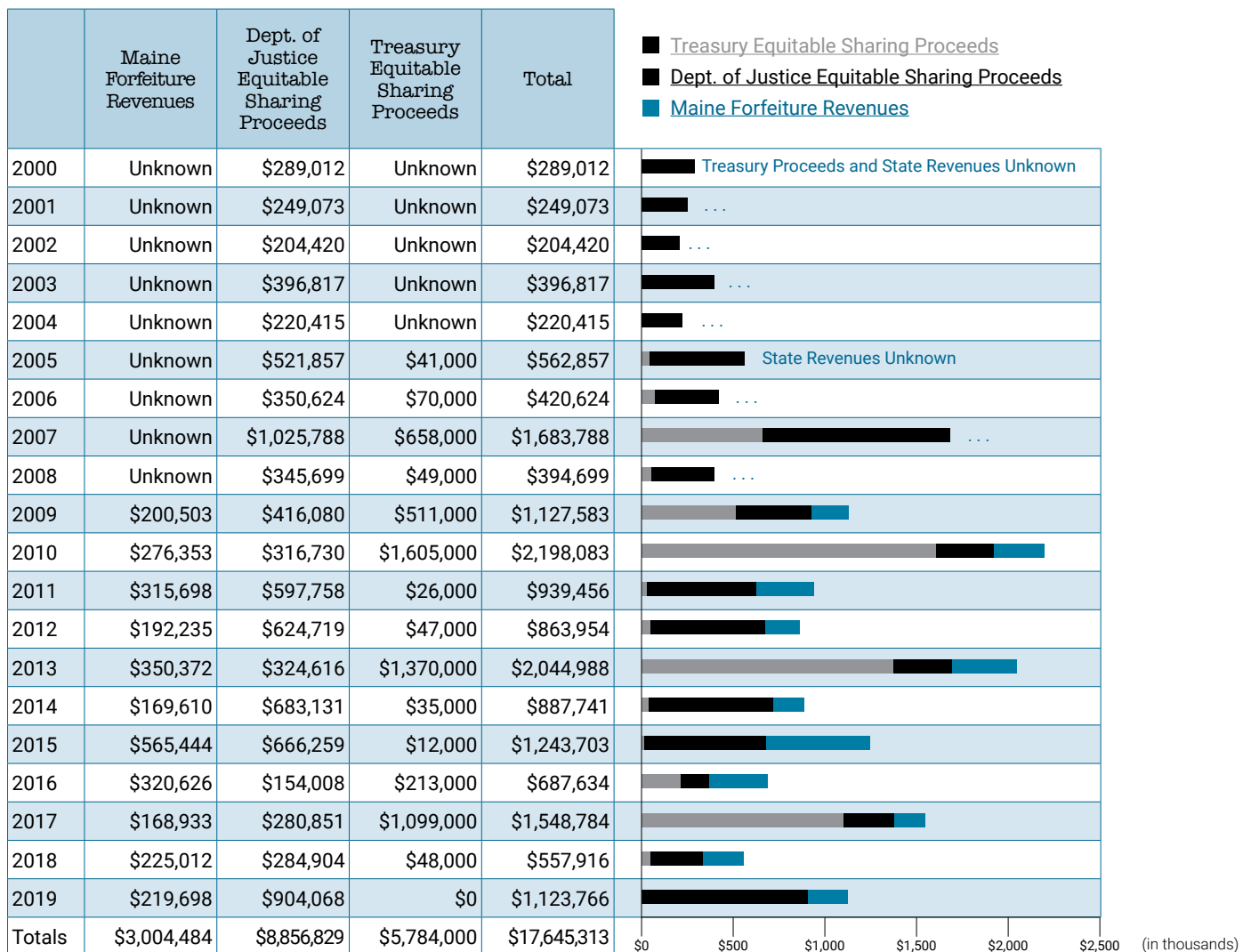
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2009 and 2019, Maine law enforcement agencies forfeited more than \$3 million under state law. Between 2000 and 2019, they generated an additional \$14 million from federal equitable sharing, for a total of at least \$17 million in forfeiture revenue. Maine ranks 6th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$17 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation. Different state revenue sources for 2001–2013 and 2014–2019.

# Maine's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>F+</b>	Penalties for Failure to File a Report	<b>Incomplete<sup>††</sup></b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F+</b>

<sup>†</sup> Maine agencies that receive forfeiture funds under the law's exceptions are not required to report how they spend them, nor does the state require audits of agency forfeiture funds.

<sup>††</sup> No reporting requirements to enforce.

For full transparency and accountability grades, visit [www.tj.org/TransparencyReportCards](http://www.tj.org/TransparencyReportCards).

## Forfeitures Under Maine Law: Key Facts

### Median Value

**\$1,670**

From 2015 to 2019, half of the Maine Attorney General's currency forfeitures were worth less than \$1,670.

### Property Types

**UNKNOWN**

Maine does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Maine does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Maine does not report how forfeiture funds are spent.

### Data Notes

No statewide records available. Figures for 2009 through partial 2014 represent forfeitures conducted by the Maine Drug Enforcement Agency and were obtained via public records request to the Maine Department of Public Safety. Figures for partial 2014 through 2019 represent forfeiture cases prosecuted by the Maine AG and were obtained via public records request to the AG. All figures are in calendar years and represent only forfeited currency. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# Maryland earns a B+ for its civil forfeiture laws:

- Somewhat higher bar to forfeit: In general, prosecutors must provide clear and convincing evidence that property is connected to a crime. A very weak conviction provision requires conviction of the owner, or owners when they are a married couple, when a family’s primary residence is at stake.
- Limited protections for the innocent: Third-party owners must prove their own innocence to recover seized property, except in cases involving vehicles, real property or property related to drug transactions.
- No profit incentive: All forfeiture proceeds go to the general fund of the state or local governing body.

## Recent Reforms

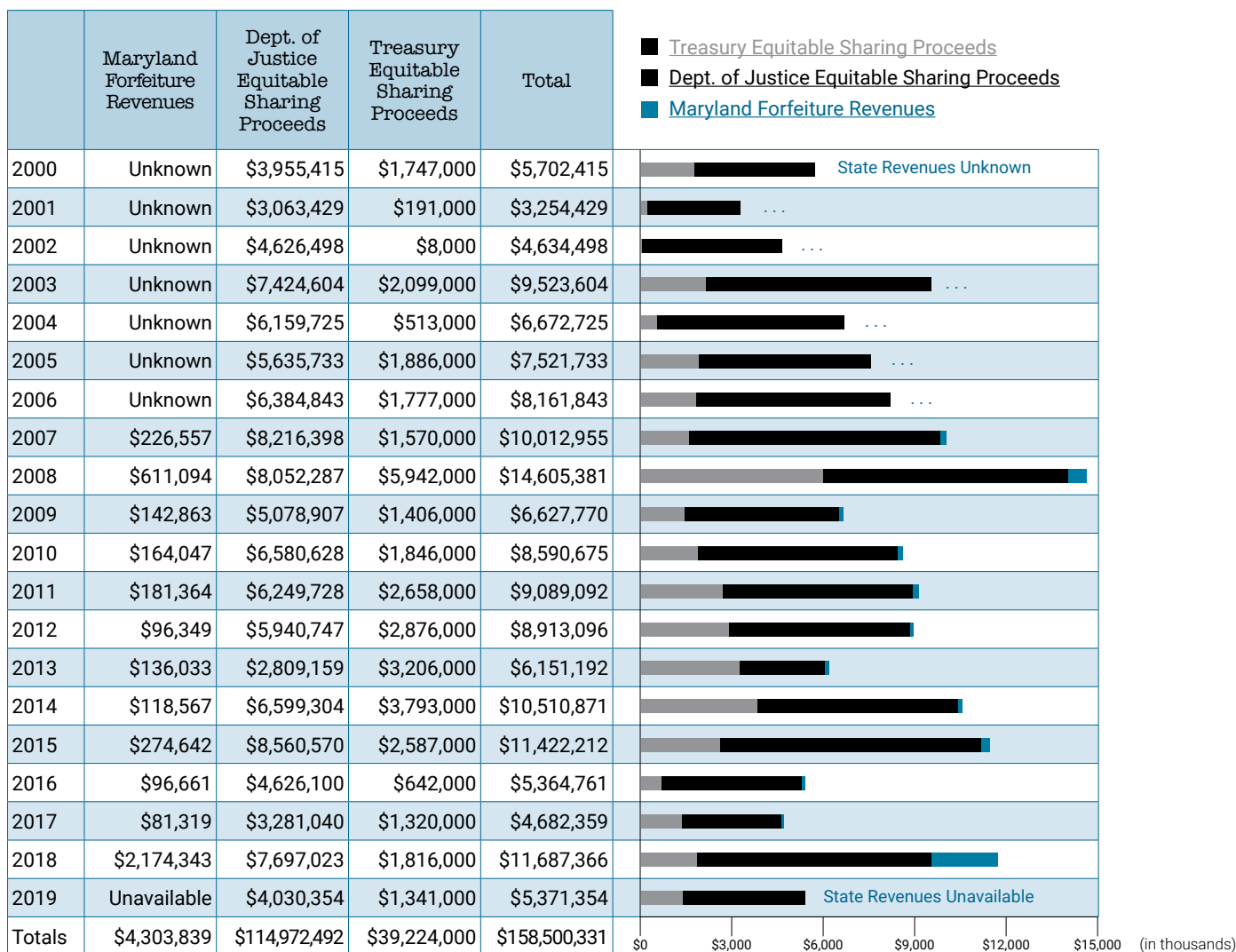
- (2016) HB 336 and SB 161: Raised standard of proof; shifted burden of proof from innocent owners to government; imposed new limits on participation in federal equitable sharing; adopted new transparency requirements; required receipts for seized property; instituted new deadlines for government to file for forfeiture or return seized property; banned forfeitures for minor drug possession; earmarked 20% of forfeiture proceeds for drug treatment and education programs.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2007 and 2018, Maryland law enforcement agencies forfeited more than \$4 million under state law. Between 2000 and 2019, they generated an additional \$154 million from federal equitable sharing, for a total of at least \$158 million in forfeiture revenue. Maryland ranks 32nd for its participation in the Department of Justice’s equitable sharing program. However, in 2016, the state prohibited federal forfeiture of locally seized property worth less than \$50,000 for equitable sharing.

**At least \$158 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation. Different state revenue sources for 2007–2017 and 2018.

# Maryland's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>N/A<sup>†</sup></b>	Penalties for Failure to File a Report	<b>D*</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>N/A<sup>†</sup></b>

<sup>†</sup> These grades are not applicable as Maryland does not permit law enforcement agencies to spend forfeiture revenue.

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

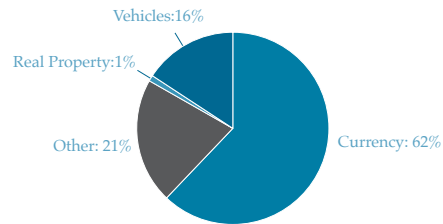
## Forfeitures Under Maryland Law: Key Facts

### Median Value



In 2018, half of Maryland's currency forfeitures were worth less than \$911.

### Property Types



In 2018, 62% of Maryland's forfeitures were of currency.

### Civil vs. Criminal

**UNKNOWN**

Maryland does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**N/A**

Maryland does not permit law enforcement agencies to spend forfeiture revenue.

### Data Notes

Figures for 2007 through 2017 represent cash and proceeds from sales of property forfeited by the Maryland State Police and were obtained via public records request to MSP. Statewide property-level forfeiture data from 2018 are from the Governor's Office of Crime Control and Prevention website. Figures represent values of forfeited property. All figures are in calendar years. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Massachusetts earns an **F** for its civil forfeiture laws:

- Lowest bar to forfeit: The government must only show probable cause that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: Up to 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

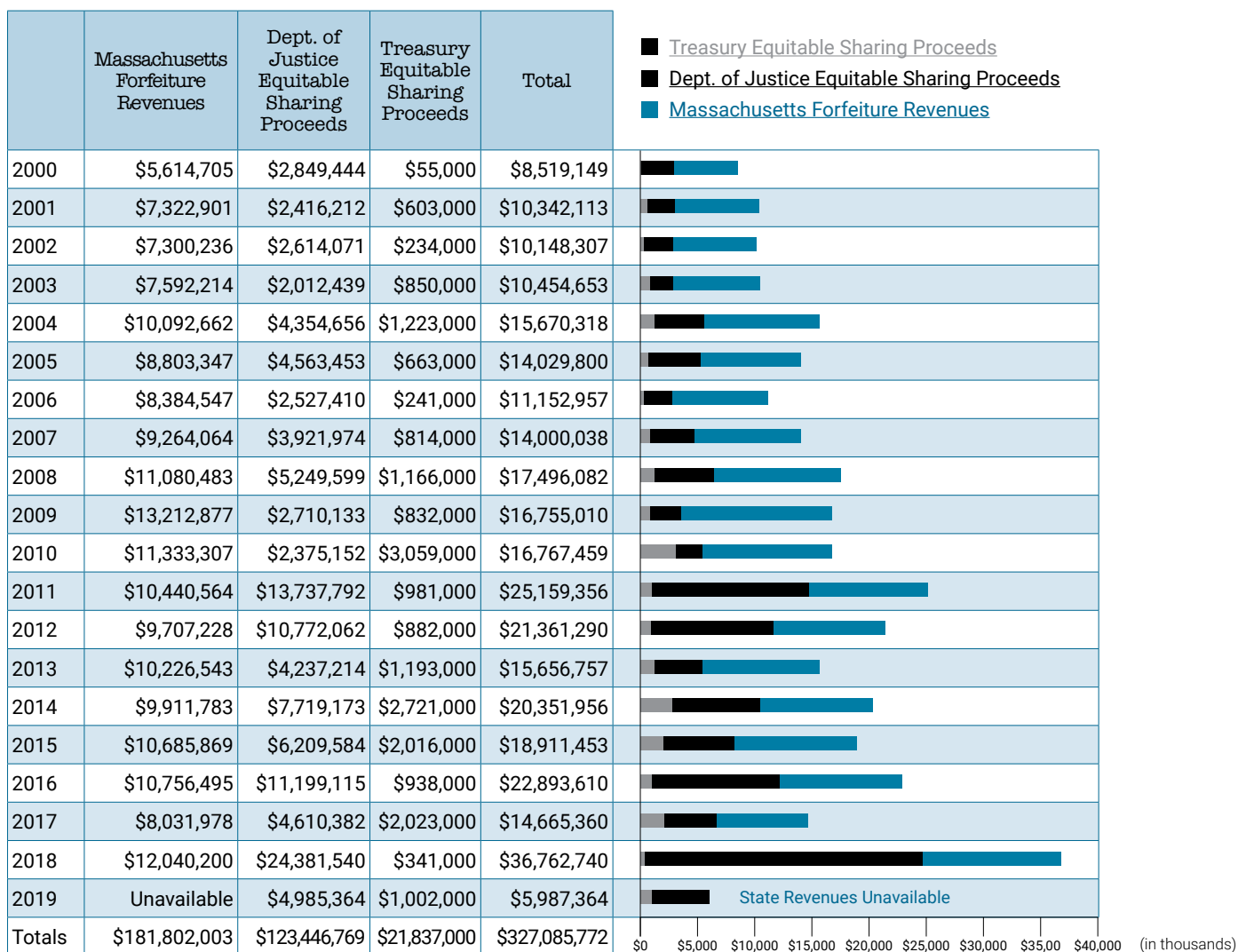
- (2018) S. 2371: Strengthened transparency requirements.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, Massachusetts law enforcement agencies forfeited nearly \$182 million under state law. Between 2000 and 2019, they generated an additional \$145 million from federal equitable sharing, for a total of at least \$327 million in forfeiture revenue. Massachusetts ranks 48th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$327 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Massachusetts' Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Massachusetts Law: Key Facts

### Median Value



Massachusetts does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

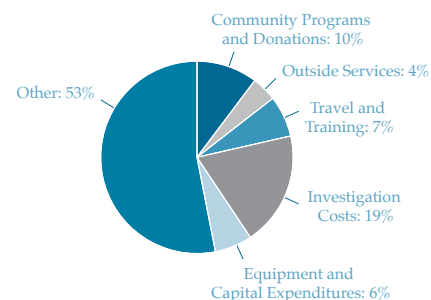
Massachusetts does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Massachusetts does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



In 2018, the Massachusetts Attorney General and district attorneys spent \$3 million from forfeiture funds—53% on other expenses, mostly interagency transfers.

### Data Notes

Forfeiture revenues were obtained from the Massachusetts Comptroller's online spending dataset and via public records request to the Comptroller. Figures presented are calculated estimates of statewide forfeiture revenues based on fiscal-year deposits to the Massachusetts AG's and each DA's special forfeiture trust fund, which, by law, receive half of all forfeiture revenues. Expenditure records for calendar-year 2018 were obtained via public records requests to the AG and each DA and represent only expenses for those offices. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Michigan earns a D- for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It applies only if an owner contests forfeiture, putting the burden on owners to engage in a costly legal battle and making it easy for the government to forfeit without a conviction. It does not require conviction of the owner, only of a “defendant,” and does not apply to cash over \$50,000. Once the conviction provision is satisfied, property must be linked to a drug crime by clear and convincing evidence or to another crime by preponderance of the evidence.
- Limited protections for the innocent: Generally, the government must prove third-party owners knew about criminal activity connected to their property, but the owner bears the burden in drug cases involving property valued above \$50,000.
- Large profit incentive: In drug cases, 100% of forfeiture proceeds go to law enforcement; 75% in all other cases.

## Recent Reforms

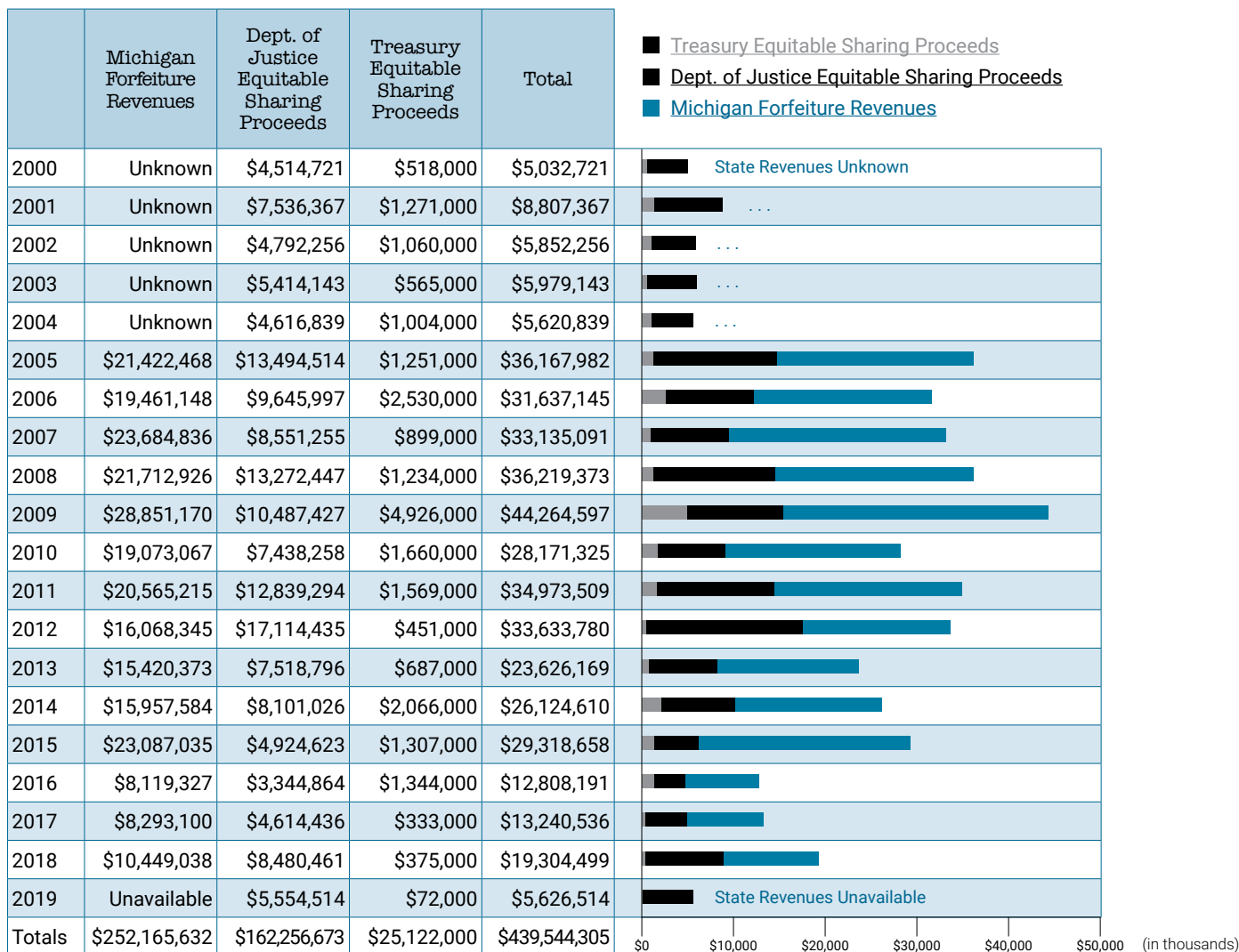
- (2019) HB 4002: Minor reform. Imposed new notice requirement, but also imposed new burdens on owners claiming seized property.
- (2019) HB 4001/SB 2: Created weak conviction provision.
- (2017) HB 4629: Eliminated bond requirement for owners challenging forfeiture.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2005 and 2018, Michigan law enforcement agencies forfeited more than \$252 million under state law. Between 2000 and 2019, they generated an additional \$187 million from federal equitable sharing, for a total of at least \$439 million in forfeiture revenue. Michigan ranks 40th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$439 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation. State reporting requirements changed in 2015.

# Michigan's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>B-</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>D*</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>B</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

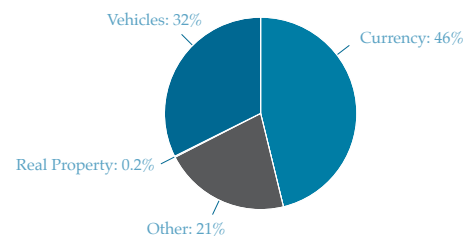
## Forfeitures Under Michigan Law: Key Facts

### Median Value

**\$423**

From 2016 to 2018, half of Michigan's currency forfeitures were worth less than \$423.

### Property Types



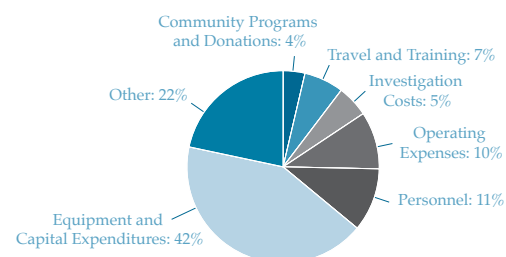
From 2016 to 2018, nearly half of Michigan's forfeitures were of currency.

### Civil vs. Criminal

**UNKNOWN**

Michigan does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2016 to 2018, 42% of Michigan law enforcement's forfeiture spending was on equipment and capital expenditures; another 22% was undefined.

### Data Notes

Forfeiture data were obtained via public records requests to the Michigan State Police. Figures for 2005 through 2015 represent agency-level proceeds. Figures for 2015 through 2018 represent value of forfeited property. Expenditure figures are from the annual reports on MSP's website and exclude mandatory victim compensation paid from 25% of forfeiture proceeds related to non-drug crimes. Figures for 2005 through 2014 are in fiscal years, while those for 2016 through 2018 are in calendar years. 2015 figures represent a mix of calendar- and fiscal-year reporting by agencies. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Minnesota earns a **D** for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41) and applies only to judicial forfeitures. For property worth less than \$50,000, the provision requires an owner to contest forfeiture, putting the burden on owners to engage in a costly legal battle and making it easy for the government to forfeit without a conviction. It does not require conviction of the owner, only of “a person,” and it does not apply if the person has agreed to help investigators to avoid criminal charges. Once the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: In general, 90% of forfeiture proceeds go to law enforcement; 60% in cases involving prostitution or human trafficking; 100% in DWI cases.

## Recent Reforms

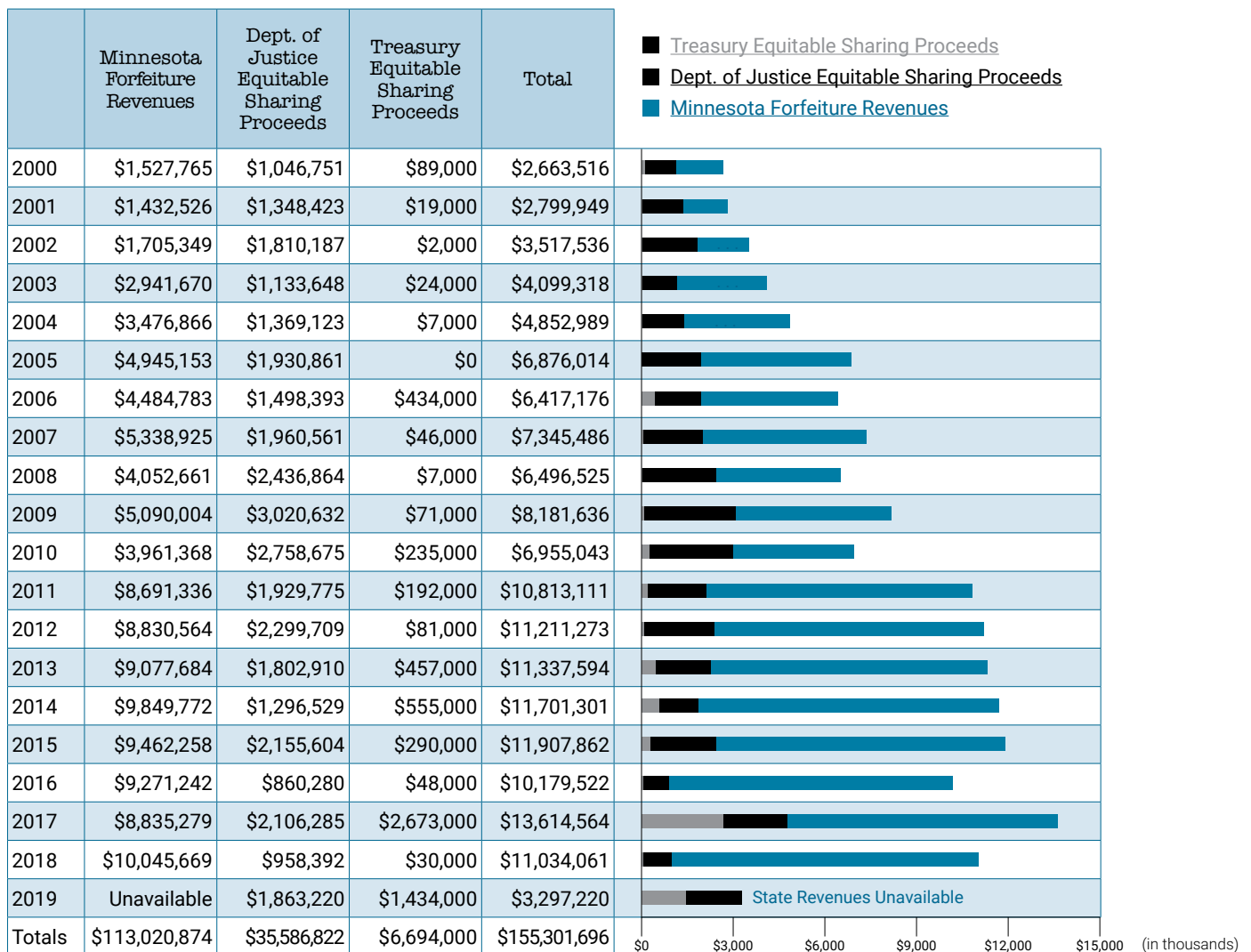
- (2017) SF 151: Allowed innocent joint owners in DWI cases to challenge forfeiture in court.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, Minnesota law enforcement agencies forfeited more than \$113 million under state law. Between 2000 and 2019, they generated an additional \$42 million from federal equitable sharing, for a total of at least \$155 million in forfeiture revenue. Minnesota ranks 19th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$155 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Minnesota's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C+</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

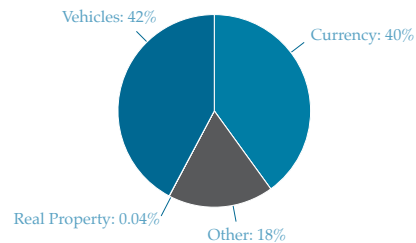
## Forfeitures Under Minnesota Law: Key Facts

### Median Value



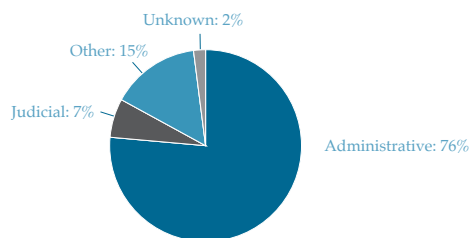
From 2015 to 2018, half of Minnesota's currency forfeitures were worth less than \$607.

### Property Types



From 2000 to 2018, 42% of Minnesota's forfeitures were of vehicles.

### Administrative vs. Judicial



From 2010 to 2018, at least 76% of forfeitures were initiated under administrative, not judicial, forfeiture procedures.

### Expenditures

**UNKNOWN**

Minnesota does not report how forfeiture funds are spent.

### Data Notes

Property-level forfeiture data were obtained via public records requests to the Minnesota State Auditor and from the Auditor's website. Calendar-year figures represent gross forfeiture revenues or the value of seized property. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# Mississippi earns a C- for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- Large profit incentive: 80% of forfeiture proceeds go to law enforcement when only one agency participated in the forfeiture; 100% otherwise.

## Recent Reforms

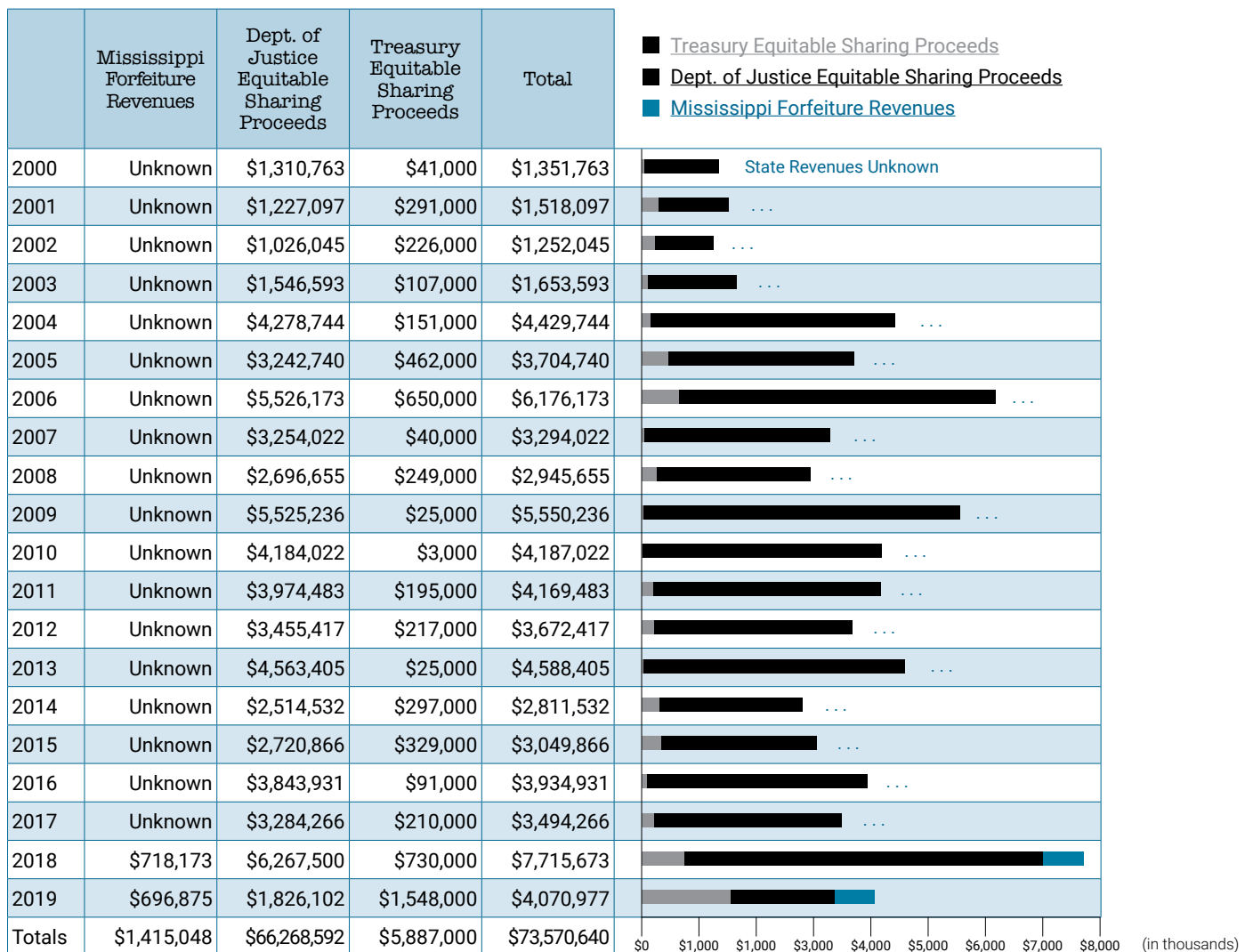
- (2017) HB 812: Adopted new transparency requirements; required law enforcement to obtain warrant within 72 hours of seizing property and request forfeiture within 30 days or tell owners how to retrieve their property.

## State and Federal Forfeiture Revenues, 2000–2019

In 2018 and 2019, Mississippi law enforcement agencies forfeited more than \$1 million under state law. Between 2000 and 2019, they generated an additional \$72 million from federal equitable sharing, for a total of at least \$73 million in forfeiture revenue. Mississippi ranks 27th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$73 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Mississippi's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D+</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>B</b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

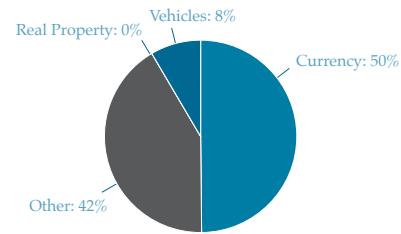
## Forfeitures Under Mississippi Law: Key Facts

### Median Value



Mississippi does not report property-level data necessary to calculate median forfeiture value.

### Property Types



From 2018 to 2019, half of Mississippi's reported forfeitures were of currency.

### Civil vs. Criminal

**UNKNOWN**

Mississippi does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Mississippi does not report how forfeiture funds are spent.

### Data Notes

Property-level data are from the Mississippi Bureau of Narcotics' forfeiture search website and represent value of forfeited property. Many agencies do not comply with reporting requirements, and the data lack key property-level criteria needed to calculate forfeited values, so the presented fiscal-year forfeitures are undercounts. Reported forfeitures were too few for further analysis. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Missouri earns a B+ for its civil forfeiture laws:

- Higher bar to forfeit: Strong conviction provision requires conviction of the owner, even if forfeiture is uncontested. Once there is a conviction, property must be linked to the crime by preponderance of the evidence.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- No profit incentive: All forfeiture proceeds go to fund schools.

## Recent Reforms

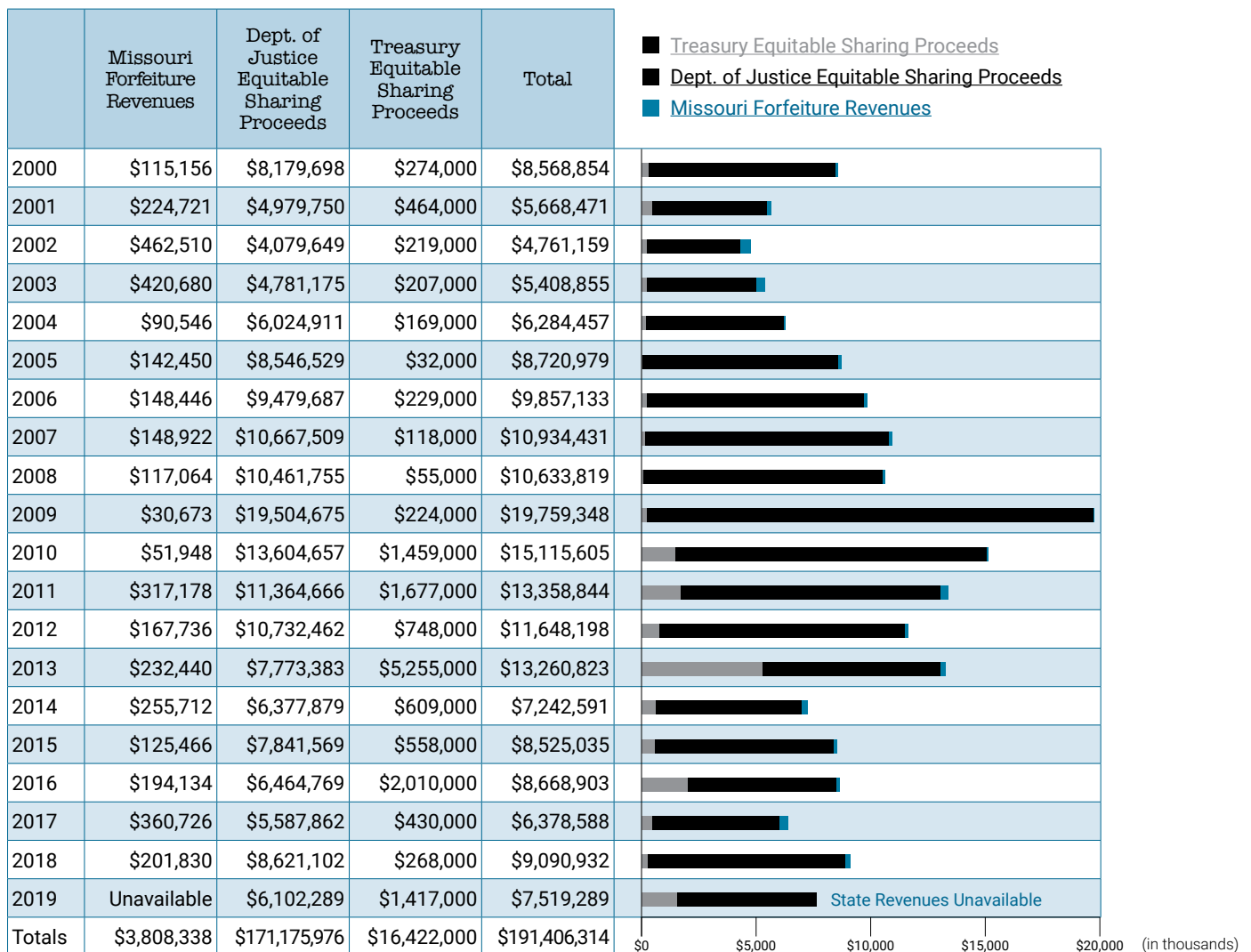
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, Missouri law enforcement agencies forfeited nearly \$4 million under state law. Between 2000 and 2019, they generated an additional \$187 million from federal equitable sharing, for a total of at least \$191 million in forfeiture revenue. Missouri ranks 34th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$191 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Missouri's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>N/A<sup>†</sup></b>	Penalties for Failure to File a Report	<b>C</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>N/A<sup>†</sup></b>

<sup>†</sup> These grades are not applicable as Missouri does not permit law enforcement agencies to spend state forfeiture revenue.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Missouri Law: Key Facts

### Median Value



Missouri does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Missouri does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Missouri does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**N/A**

Missouri does not permit law enforcement agencies to spend state forfeiture revenue.

### Data Notes

Reports of prosecuting attorney and Missouri Attorney General seizures are from the State Auditor's website. Figures represent forfeiture proceeds of cash and properties seized and then transferred to the state within the same calendar year. Millions of dollars from cases still pending at the end of each year are not accounted for in the figures. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Montana earns a D- for its civil forfeiture laws:

- Higher bar to forfeit: Strong conviction provision requires conviction of the owner in a criminal proceeding held in conjunction with the forfeiture action. Once there is a conviction, property must be linked to the crime by clear and convincing evidence.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- Large profit incentive: Up to 100% of forfeiture proceeds go to law enforcement (annual proceeds to state agencies above \$125,000 are split 50-50 between the general fund and a state forfeiture fund).

## Recent Reforms

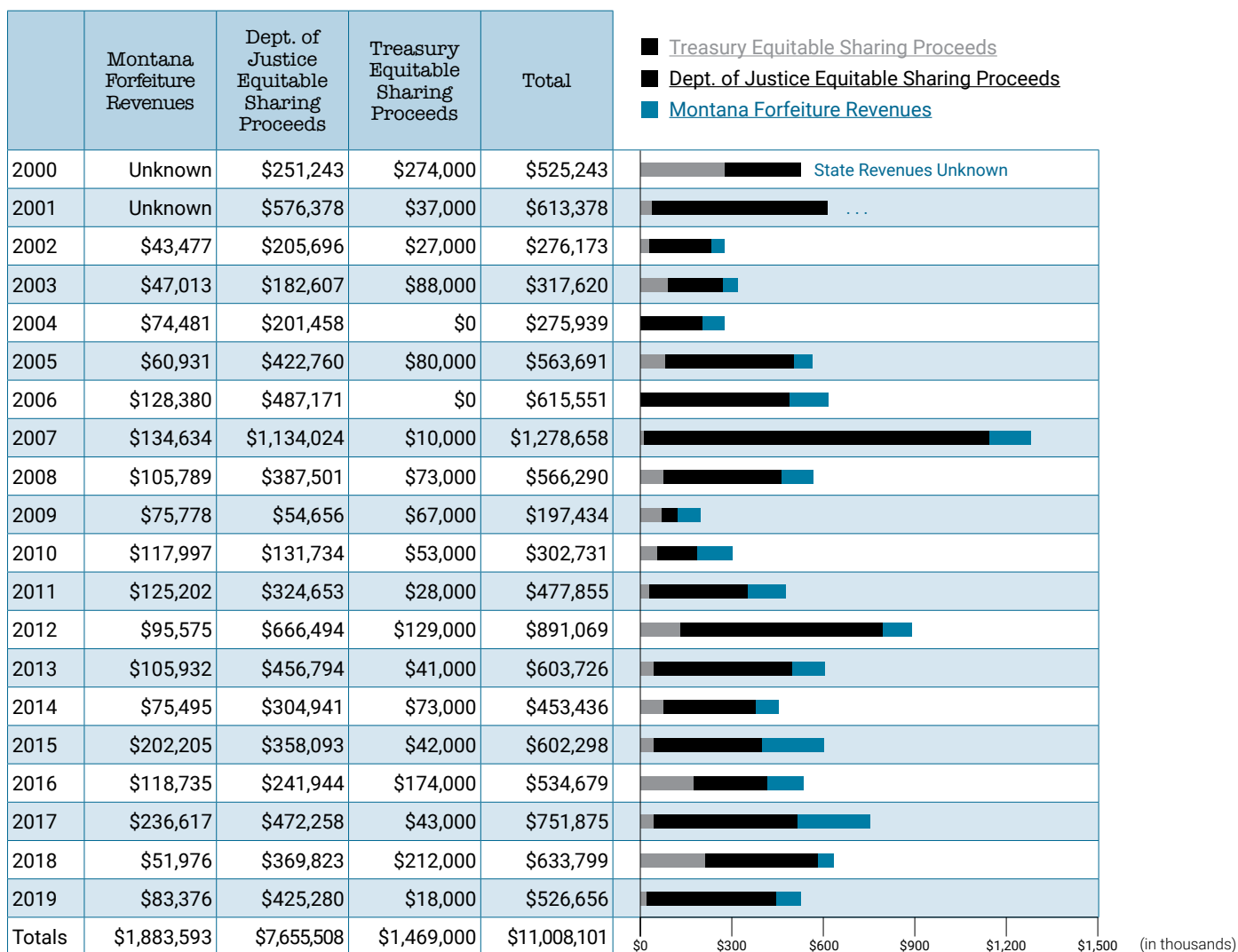
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2002 and 2019, Montana law enforcement agencies forfeited nearly \$2 million under state law. Between 2000 and 2019, they generated an additional \$9 million from federal equitable sharing, for a total of at least \$11 million in forfeiture revenue. Montana ranks 9th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$11 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Montana's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>F</b>	Accessibility of Forfeiture Records	<b>F</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>Incomplete<sup>†</sup></b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

<sup>†</sup> No reporting requirements to enforce.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Montana Law: Key Facts

### Median Value



Montana does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Montana does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Montana does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Montana does not report how forfeiture funds are spent.

### Data Notes

Records were obtained via public records requests to the Montana Department of Justice. Figures represent fiscal-year forfeited cash and proceeds from sales of property deposited into the state special revenue fund. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Nebraska earns a C for its forfeiture laws:

- Highest bar to forfeit: Nebraska has only criminal forfeiture.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 50% of forfeiture proceeds go to law enforcement.

## Recent Reforms

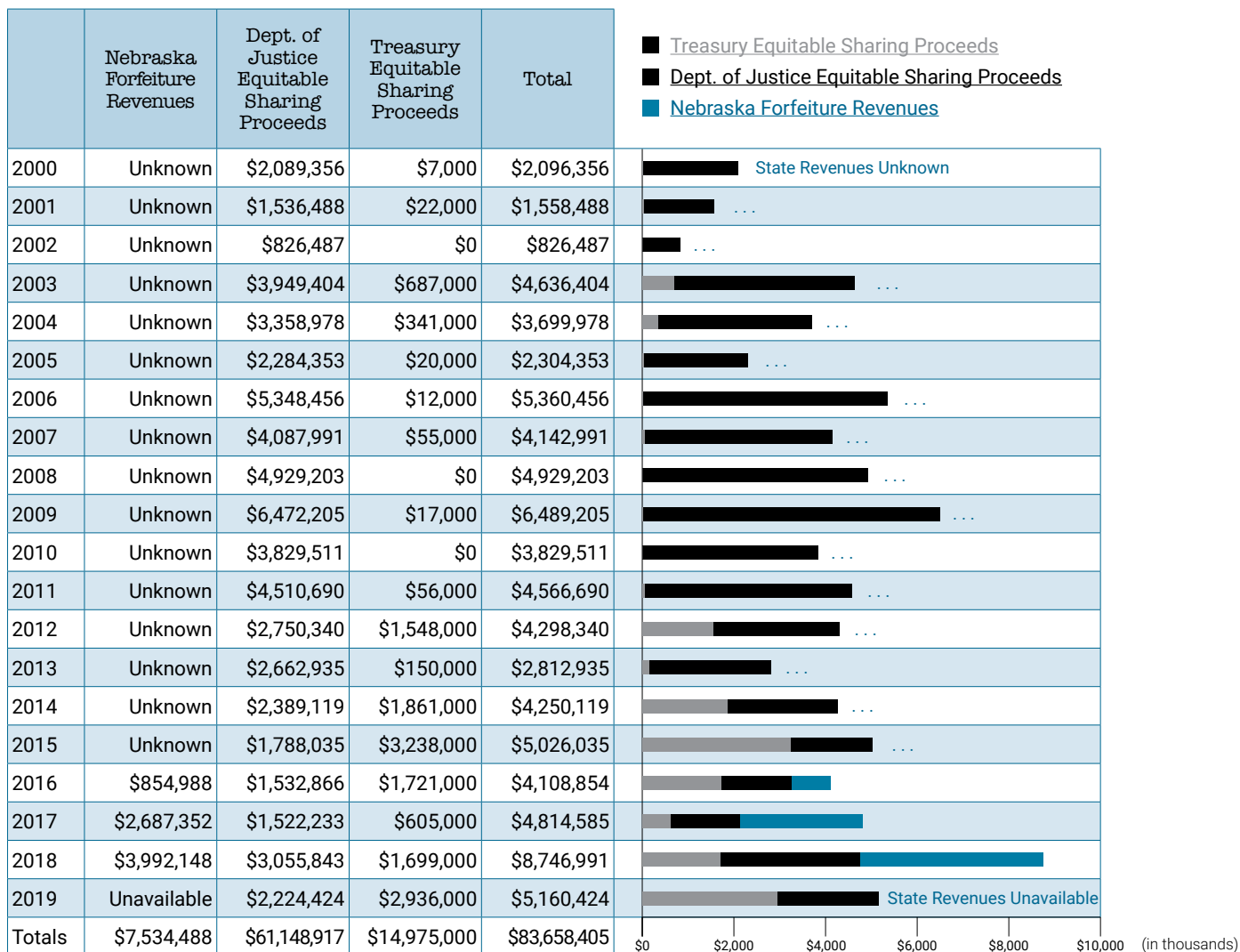
- (2016) LB 1106: Abolished civil forfeiture and replaced it with criminal forfeiture; set a standard of clear and convincing evidence to forfeit property following a criminal conviction; imposed new limits on participation in federal equitable sharing; adopted new transparency requirements.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2016 and 2018, Nebraska law enforcement agencies forfeited more than \$7 million under state law. Between 2000 and 2019, they generated an additional \$76 million from federal equitable sharing, for a total of at least \$83 million in forfeiture revenue. Nebraska ranks 18th for its participation in the Department of Justice’s equitable sharing program. However, in 2016, the state prohibited federal forfeiture of locally seized property worth less than \$25,000 for equitable sharing.

**At least \$83 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Nebraska's Forfeiture Transparency and Accountability Report Card

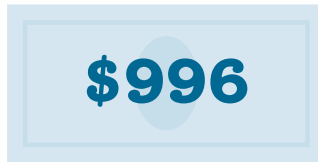
Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F*</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

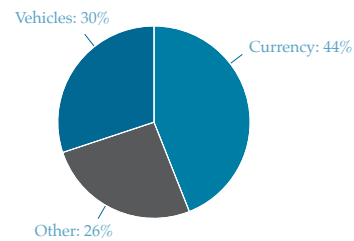
## Forfeitures Under Nebraska Law: Key Facts

### Median Value



From 2016 to 2018, half of Nebraska's currency forfeitures were worth less than \$996.

### Property Types



From 2016 to 2018, 44% of Nebraska's forfeitures were of currency.

### Civil vs. Criminal

**N/A**

Nebraska processes all forfeitures under criminal law.

### Expenditures

**UNKNOWN**

Nebraska does not report how forfeiture funds are spent.

### Data Notes

Property-level data are from the Nebraska Auditor of Public Accounts website. Calendar-year figures represent value of forfeited currency and property forfeited and include retained and destroyed property. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# Nevada earns a D- for its civil forfeiture laws:

- Somewhat higher bar to forfeit: Prosecutors must provide clear and convincing evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: Up to 100% of forfeiture proceeds go to law enforcement (at fiscal year end, 70% of any amount above \$100,000 in the government’s forfeiture account goes to fund schools in the judicial district where property was seized).

## Recent Reforms

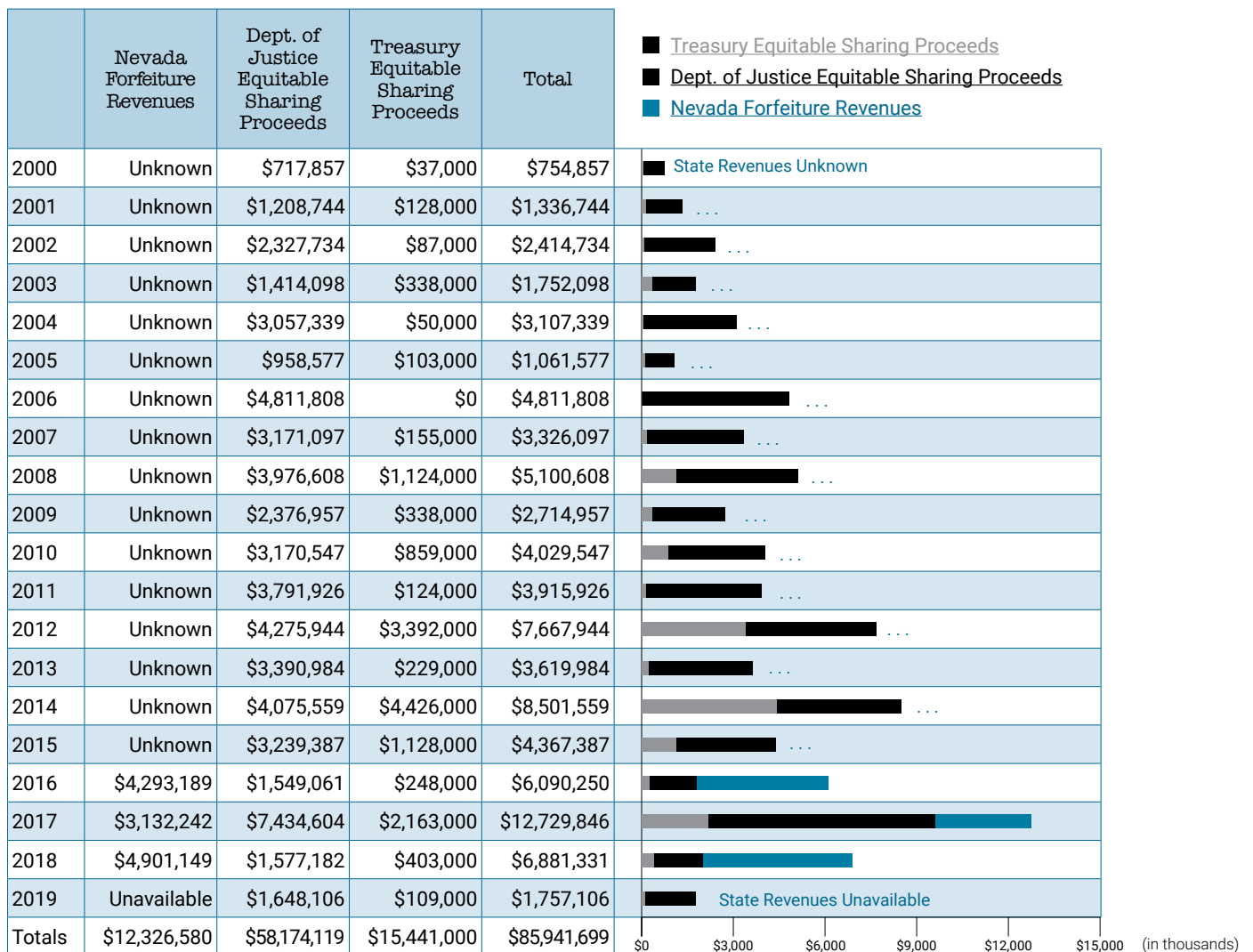
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2016 and 2018, Nevada law enforcement agencies forfeited more than \$12 million under state law. Between 2000 and 2019, they generated an additional \$73 million from federal equitable sharing, for a total of at least \$85 million in forfeiture revenue. Nevada ranks 30th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$85 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Nevada's Forfeiture Transparency and Accountability Report Card

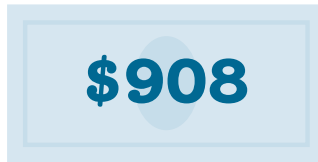
Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>D</b>	Penalties for Failure to File a Report	<b>D*</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

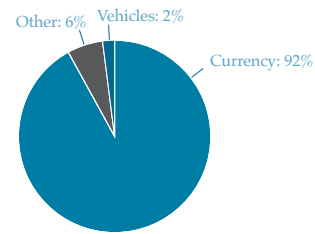
## Forfeitures Under Nevada Law: Key Facts

### Median Value



From 2016 to 2018, half of Nevada's currency forfeitures were worth less than \$908.

### Property Types



From 2016 to 2018, 92% of Nevada's forfeitures were of currency.

### Civil vs. Criminal

UNKNOWN

Nevada does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

UNKNOWN

Nevada does not report how forfeiture funds are spent.

### Data Notes

Property-level data were obtained via public records requests to the Nevada Attorney General. Fiscal-year figures represent seizing agencies' gross revenues of currency and sold property and exclude transfers to other agencies. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# New Hampshire earns a **D** for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It purports to require conviction of the owner but also makes it the owner’s burden to prove their own innocence. The standard by which property must be linked to a crime following a conviction is unclear.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 90% of forfeiture proceeds go to law enforcement (45% to local law enforcement up to \$225,000 from a single forfeiture and 45% to the state drug forfeiture fund; any amount above \$1 million in the state drug forfeiture fund goes to the state general fund).

## Recent Reforms

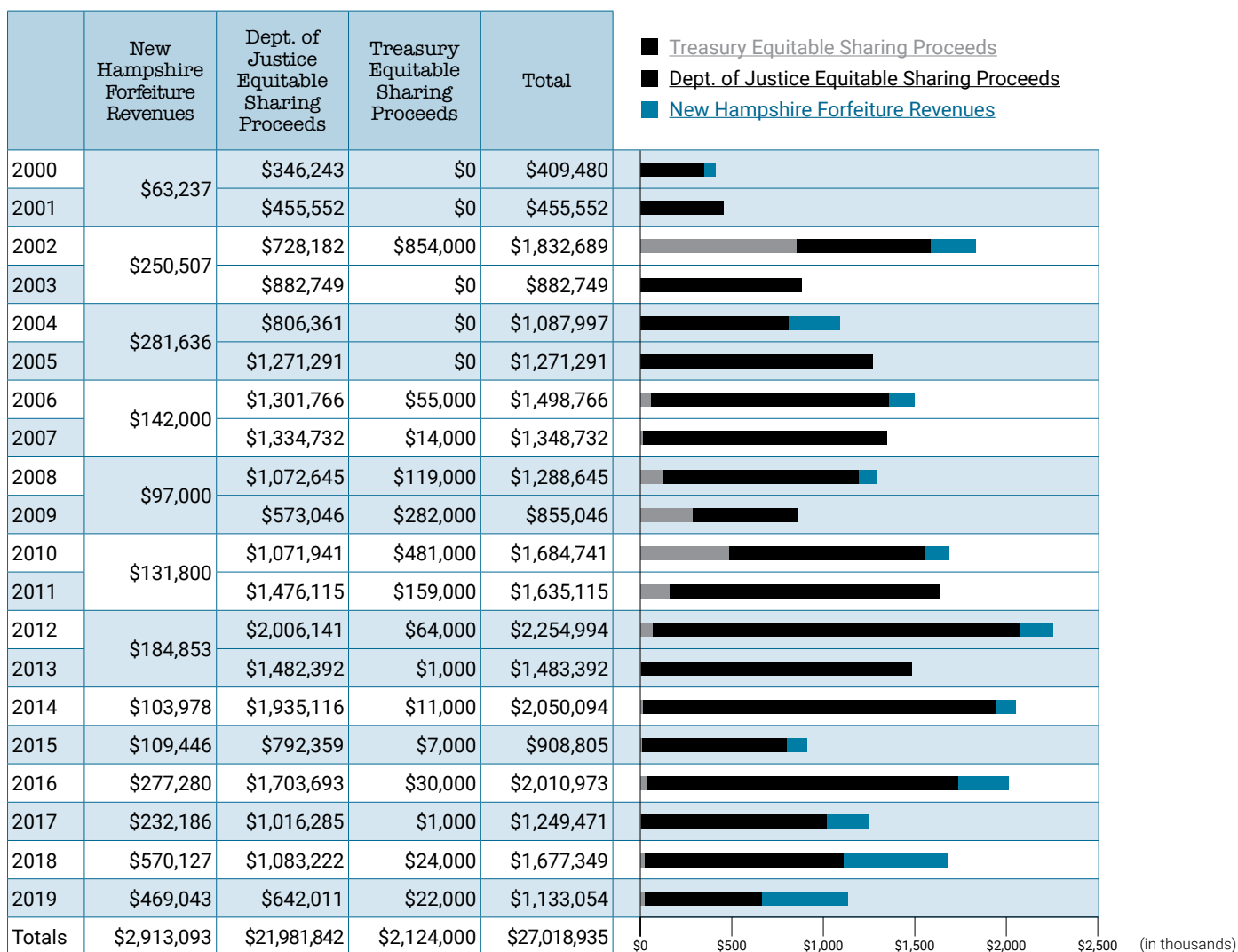
- (2018) SB 498: Strengthened transparency requirements.
- (2016) SB 522: Purported to raise standard of proof; created weak conviction provision; strengthened transparency requirements; abolished administrative forfeiture.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2019, New Hampshire law enforcement agencies forfeited nearly \$3 million under state law and generated an additional \$24 million from federal equitable sharing, for a total of at least \$27 million in forfeiture revenue. New Hampshire ranks 11th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$27 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation. Different state revenue sources for 2001–2013 and 2014–2019.

# New Hampshire's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under New Hampshire Law: Key Facts

### Median Value



New Hampshire does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

New Hampshire does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

New Hampshire does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

New Hampshire does not report how forfeiture funds are spent.

## Data Notes

Biennial reports of fiscal years 2001 through 2013 were obtained from the New Hampshire Attorney General's website and via public records request to the AG. Figures represent forfeited money and proceeds from sales of forfeited property. Figures for fiscal years 2014 through 2019 are from reports on the New Hampshire General Court website. Figures represent revenue deposited to the state's Drug Forfeiture Fund. They include maintenance costs and may include restitution. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# New Jersey earns a D- for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It applies only to contested forfeitures of cash worth less than \$1,000 or other property worth less than \$10,000, putting the burden on owners to engage in a costly legal battle to win back low-value property. On the other hand, it precludes forfeiture when criminal charges related to the property seizure are never filed against a person (not necessarily the owner) or prosecutors fail to establish the person's criminal culpability. Once the conviction provision is satisfied, property must be linked to the crime by preponderance of the evidence.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement when forfeiture is pursued by local agencies; 95% when forfeiture is pursued by the attorney general.

## Recent Reforms

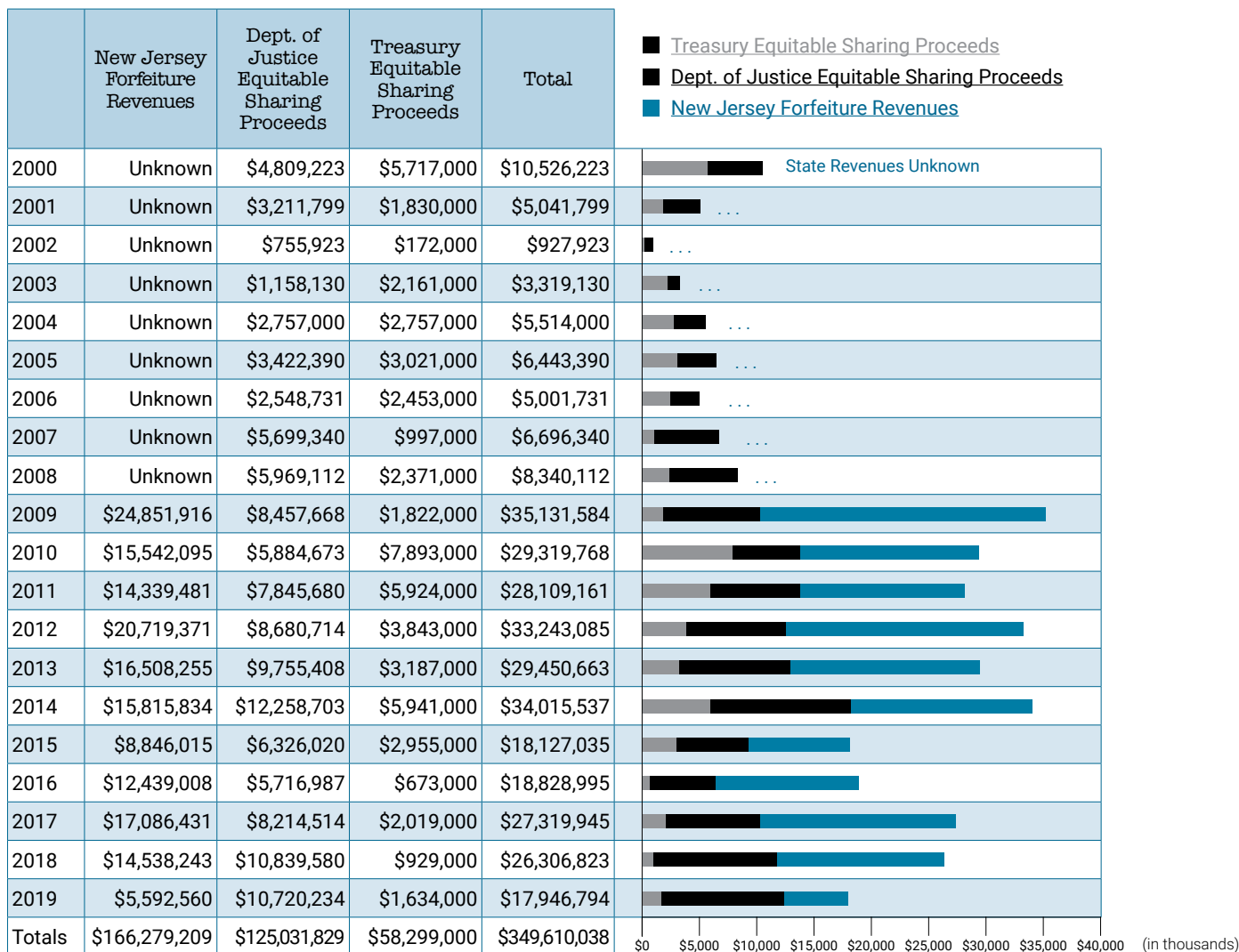
- (2020) A4970: Created weak conviction provision.
- (2020) A3442/S1963: Adopted IJ's model reporting legislation, giving New Jersey one of the best forfeiture transparency laws in the country.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2009 and 2019, New Jersey law enforcement agencies forfeited more than \$166 million under state law. Between 2000 and 2019, they generated an additional \$183 million from federal equitable sharing, for a total of at least \$349 million in forfeiture revenue. New Jersey ranks 37th for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$349 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# New Jersey's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>A</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>?<sup>†</sup></b>	Penalties for Failure to File a Report	<b>B<sup>*</sup></b>
Statewide Forfeiture Reports	<b>?<sup>†</sup></b>	Financial Audits of Forfeiture Accounts	<b>A</b>

<sup>†</sup> Spending and statewide reports required by the 2020 reform not yet available.

<sup>\*</sup> Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.nj.org/TransparencyReportCards](http://www.nj.org/TransparencyReportCards).

## Forfeitures Under New Jersey Law: Key Facts

### Median Value



New Jersey does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

New Jersey does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

New Jersey does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

New Jersey does not report how forfeiture funds are spent.

## Data Notes

Forfeiture reports were obtained from the New Jersey Attorney General's website and via public records requests to each county prosecutor. All figures are in calendar years and represent the AG's cash forfeited and disbursed to law enforcement as well as the DA's cash forfeited and value of forfeited property. One county failed to provide records for 2014 through 2018. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# New Mexico earns an **A** for its forfeiture laws:

- Highest bar to forfeit: New Mexico has only criminal forfeiture.
- Stronger protections for the innocent: The government must prove by clear and convincing evidence that a third-party owner knew about the criminal use of their property.
- No profit incentive: All forfeiture proceeds, beyond some retained to cover related expenses, go to the general fund.

## Recent Reforms

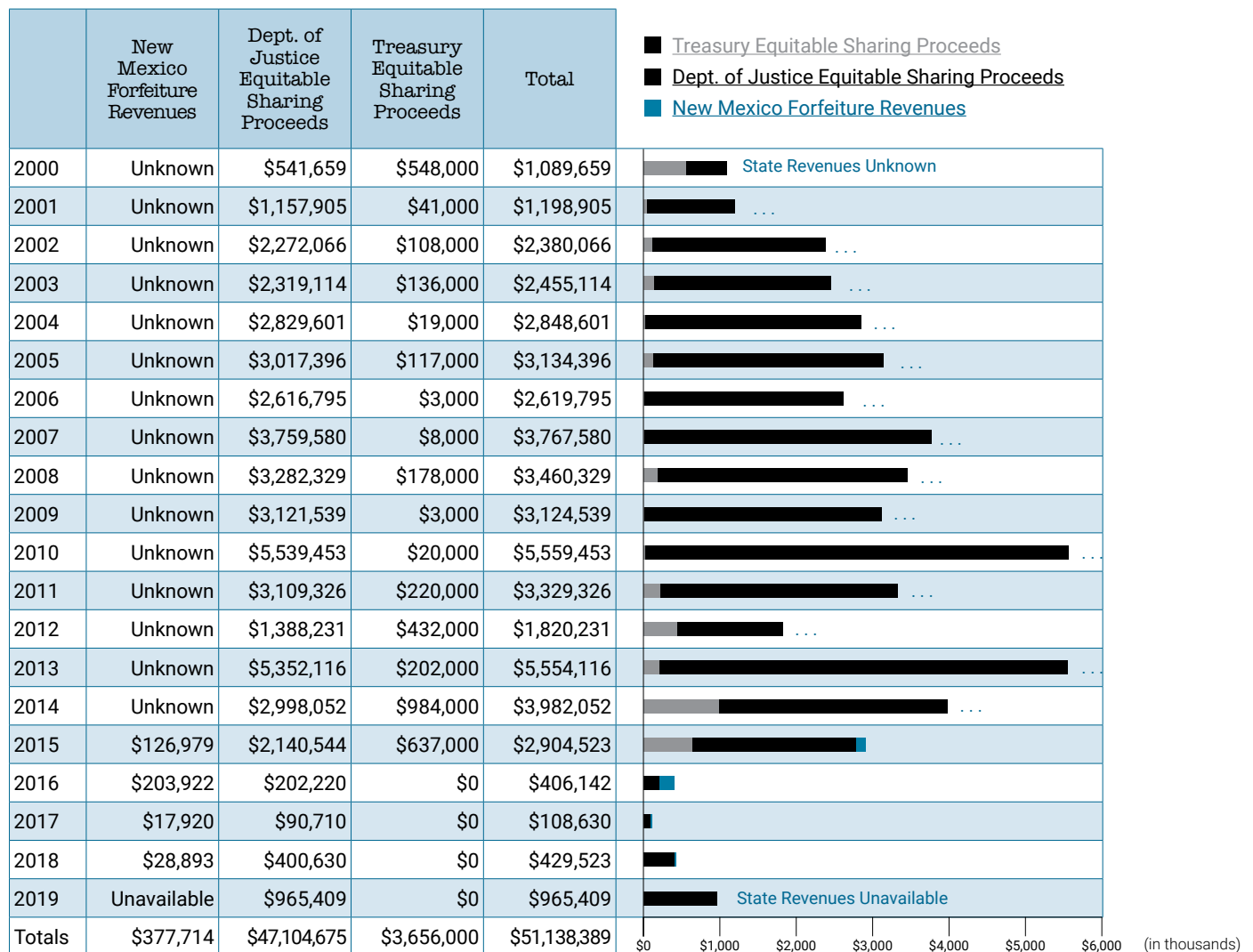
- (2019) HB 312: Formally extended the abolition of civil forfeiture to cover municipalities; added new procedural protections; permitted law enforcement to keep part of the proceeds from the sale of forfeited and abandoned property to cover related expenses; strengthened transparency requirements.
- (2018) State Court Ruling in *Espinoza v. City of Albuquerque*: Held that Albuquerque’s vehicle forfeiture program was preempted by the state’s 2015 reform.
- (2018) Federal Court Rulings in *Harjo v. City of Albuquerque*: Declared Albuquerque’s vehicle forfeiture program unconstitutional after concluding it violated due process by creating an unconstitutional incentive to forfeit and forcing owners to prove their innocence.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2015 and 2018, New Mexico law enforcement agencies forfeited more than \$377,000 under state law. Between 2000 and 2019, they generated an additional \$50.8 million from federal equitable sharing, for a total of at least \$51.1 million in forfeiture revenue. New Mexico ranks 4th for its participation in the Department of Justice’s equitable sharing program. The state also directs all forfeiture proceeds, including equitable sharing proceeds, to the general fund, effectively eliminating agencies’ incentive to participate.

**At least \$51.1 million**  
in state and federal  
forfeiture revenue

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# New Mexico's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D-</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>N/A<sup>†</sup></b>	Penalties for Failure to File a Report	<b>F*</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>N/A<sup>†</sup></b>

<sup>†</sup> These grades are not applicable as New Mexico does not permit law enforcement agencies to spend forfeiture revenue.

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under New Mexico Law: Key Facts

### Median Value



New Mexico does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Reported forfeitures were too few for further analysis.

### Civil vs. Criminal

**N/A**

New Mexico processes all forfeitures under criminal law.

### Expenditures

**N/A**

New Mexico does not permit law enforcement agencies to spend forfeiture revenue.

### Data Notes

Property-level data are from the New Mexico Department of Public Safety website. Figures represent calendar-year forfeitures and include currency forfeited and market value of forfeited property. Reported forfeitures were too few for further analysis. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# New York earns a C for its civil forfeiture laws:

- Somewhat higher bar to forfeit: In drug cases, prosecutors must provide clear and convincing evidence that a crime occurred and then prove seized property’s connection to that crime by preponderance of the evidence. A very weak conviction provision applies in non-drug cases.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- Large profit incentive: 60% of forfeiture proceeds go to law enforcement.

## Recent Reforms

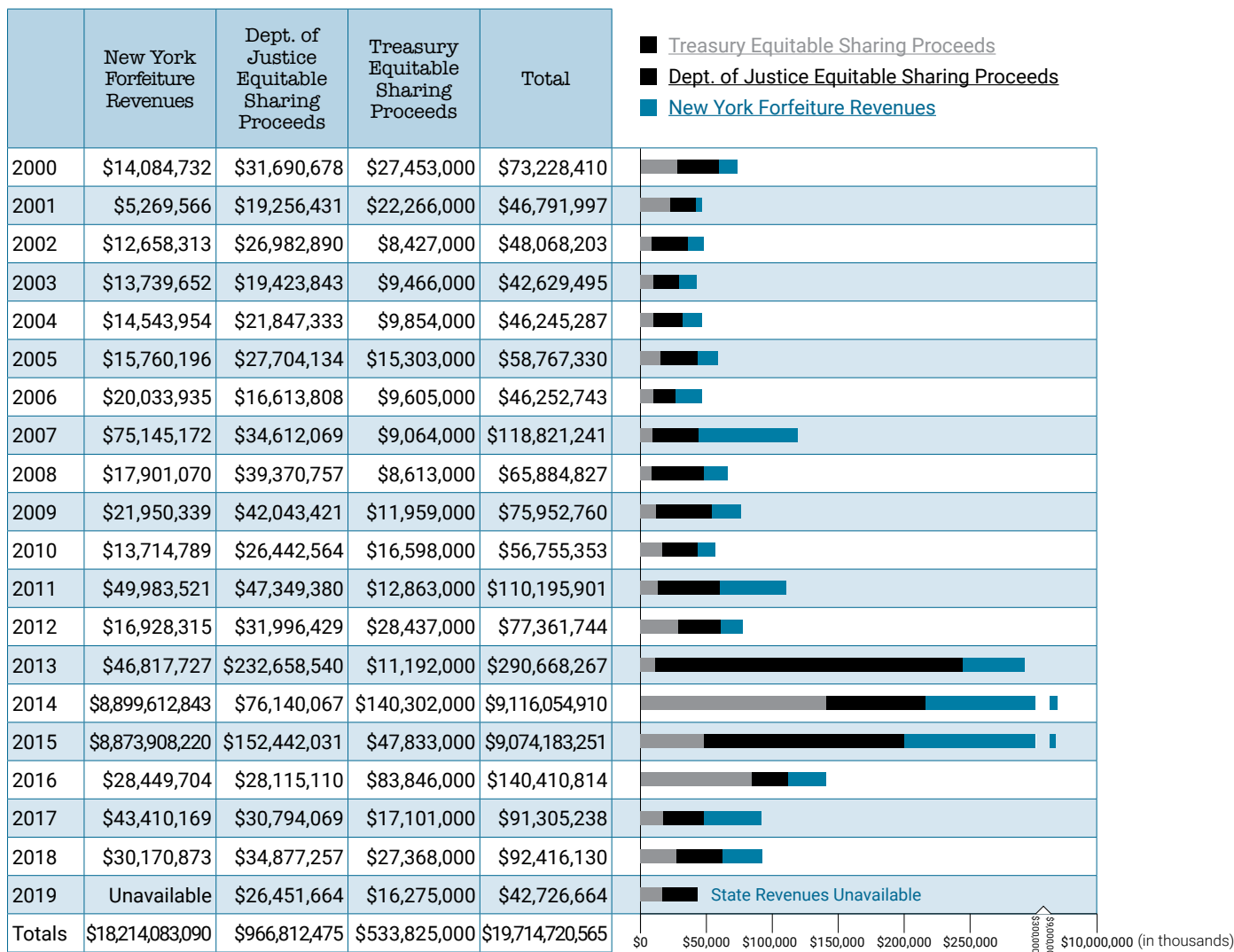
- (2018) FY 2020 State Budget: Strengthened transparency requirements.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, New York law enforcement agencies forfeited more than \$18.2 billion under state law. Between 2000 and 2019, they generated an additional \$1.4 billion from federal equitable sharing, for a total of at least \$19.7 billion in forfeiture revenue. New York ranks 50th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$19.7 billion**  
in state and federal  
forfeiture revenue

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation. State reporting format changed in 2010. Outliers in 2014 and 2015 are attributed to forfeitures by the New York County District Attorney’s office.

## New York's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>D</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>C</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

### Forfeitures Under New York Law: Key Facts

#### Median Value



New York does not report property-level data necessary to calculate median forfeiture value.

#### Property Types

**UNKNOWN**

New York does not report the types of property forfeited.

#### Civil vs. Criminal

**UNKNOWN**

New York does not report whether forfeitures are processed under civil or criminal forfeiture law.

#### Expenditures

**UNKNOWN**

New York does not report how most forfeiture funds are spent.

#### Data Notes

Calendar-year figures are from reports on the New York State Division of Criminal Justice Services website. Generally, figures purport to represent the value of assets forfeited. Those for 2011 represent only money forfeited. Figures for 2012 through 2018 include the value of retained vehicles and other forfeited property. Spikes in 2014 and 2015 are attributed to New York County's reported total forfeited assets. Case-level data obtained via public records request to CJS could not be used for further analysis. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# North Carolina earns a **B+** for its forfeiture laws:

- Highest bar to forfeit in most cases: In general, North Carolina has only criminal forfeiture. However, prosecutors can pursue civil forfeiture in racketeering cases, where they must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: In racketeering cases, third-party owners must prove their own innocence to recover seized property.
- No profit incentive: All forfeiture proceeds go to fund schools.

## Recent Reforms

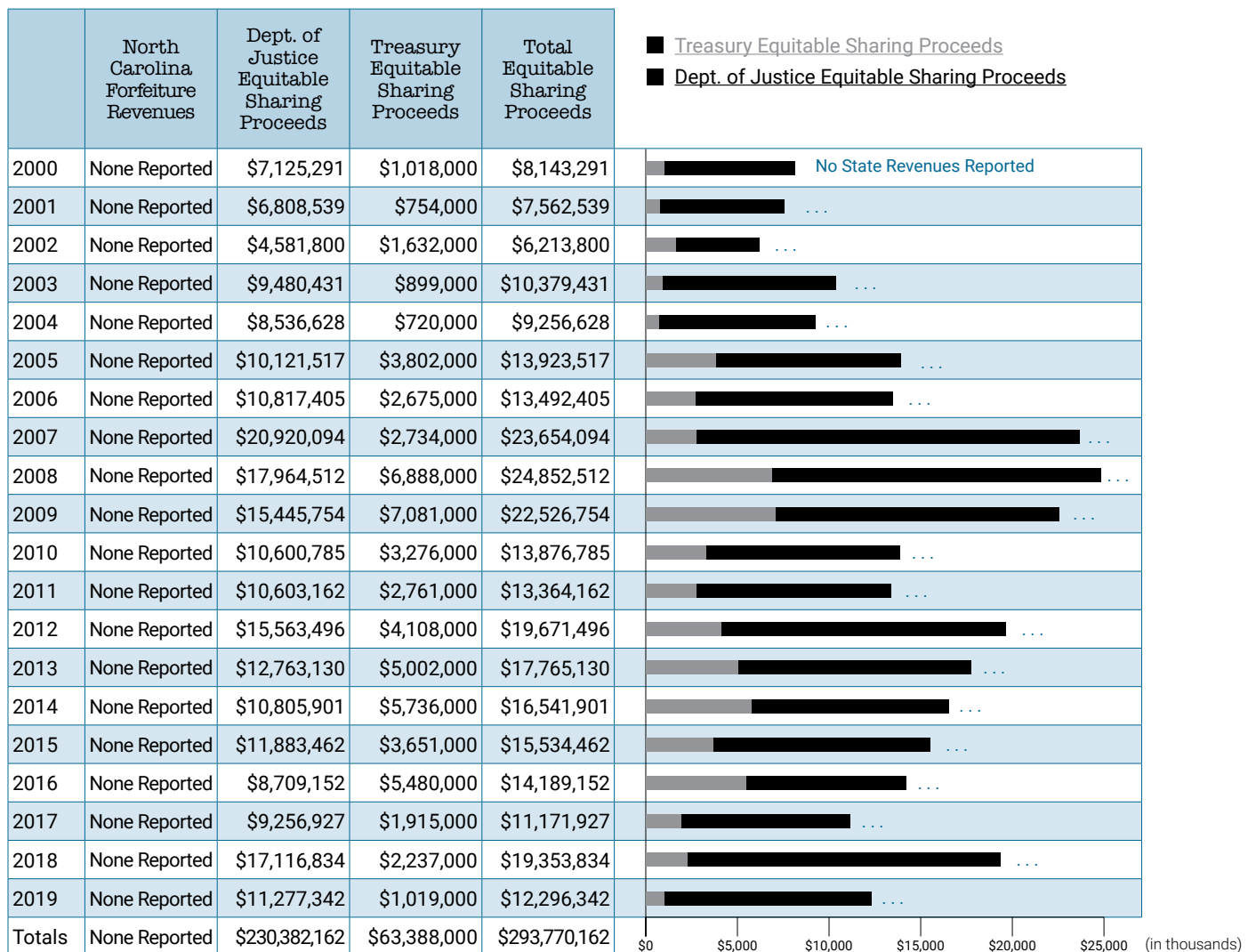
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2019, North Carolina law enforcement agencies generated more than \$293 million in forfeiture revenue from federal equitable sharing. North Carolina reports that it does not conduct forfeitures under state law. However, it does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law. North Carolina ranks 45th for its participation in the Department of Justice's equitable sharing program.

**At least \$293 million  
in federal forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# North Carolina's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>F</b>	Accessibility of Forfeiture Records	<b>F</b>
Accounting for Forfeiture Fund Spending	<b>N/A<sup>†</sup></b>	Penalties for Failure to File a Report	<b>Incomplete<sup>††</sup></b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>N/A<sup>†</sup></b>

While North Carolina claims it does not engage in forfeiture, state law does permit the practice and therefore robust reporting requirements should be in place.

<sup>†</sup> These grades are not applicable as North Carolina does not permit law enforcement to spend state forfeiture revenue.

<sup>††</sup> No reporting requirements to enforce.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under North Carolina Law: Key Facts

### Median Value



North Carolina does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

North Carolina does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

North Carolina does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**N/A**

North Carolina does not permit law enforcement agencies to spend state forfeiture revenue.

### Data Notes

A public records request for forfeiture records to the North Carolina Department of Revenue returned no responsive records. According to DOR, the state does not forfeit cash or property. Records provided for and included in the second edition of *Policing for Profit* reflected tax seizures for duties not paid on contraband, not state forfeitures. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports.

# North Dakota earns a **D-** for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It requires the owner's conviction but does not apply if the owner fails to contest forfeiture, putting the burden on owners to engage in a costly legal battle and making it easy for the government to forfeit without a conviction. It also does not apply if the owner has agreed to help investigators in exchange for immunity or a reduced sentence. Once the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence. No conviction necessary if property can be connected to a crime beyond a reasonable doubt.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: Up to 100% of forfeiture proceeds go to law enforcement (any amount above \$200,000 in the government's forfeiture account over any two-year budget period goes to the general fund).

## Recent Reforms

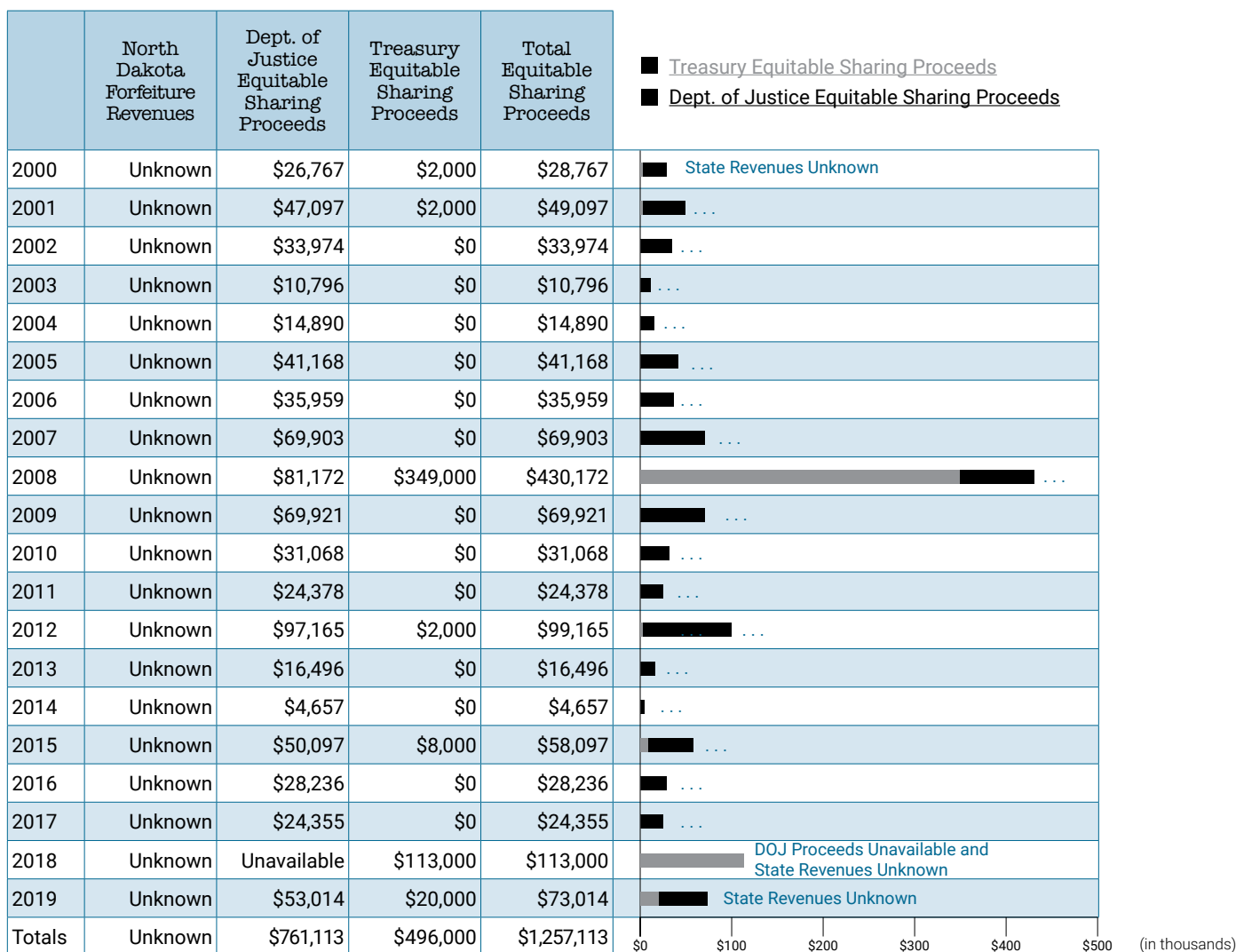
- (2019) HB 1286: Raised standard of proof; created weak conviction provision; adopted new transparency requirements; banned forfeiture of homesteaded real property and vehicles worth less than \$2,000 unless modified to conceal contraband or cash; established proportionality hearing.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2019, North Dakota law enforcement agencies generated more than \$1 million in forfeiture revenue from federal equitable sharing. North Dakota ranks 2nd for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$1 million  
in federal forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# North Dakota's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>B-</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>?<sup>†</sup></b>	Financial Audits of Forfeiture Accounts	<b>F</b>

<sup>†</sup> Statewide reports required by the 2019 reform not yet available.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under North Dakota Law: Key Facts

### Median Value



North Dakota does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

North Dakota does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

North Dakota does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

North Dakota does not report how forfeiture funds are spent.

### Data Notes

No statewide records available. North Dakota had no reporting requirements before the reporting law enacted in 2019. The first forfeiture reports, for fiscal year 2020, are expected in late 2020 on the North Dakota Attorney General's website. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports.

# Ohio earns a D- for its civil forfeiture laws:

- Somewhat higher bar to forfeit: Prosecutors must provide clear and convincing evidence that property is connected to a crime.
- Limited protections for the innocent: Generally, third-party owners must prove their own innocence to recover seized property, but the government bears the burden in cases involving legally titled or registered property and property valued above \$15,000.
- Large profit incentive: In general, up to 100% of forfeiture proceeds go to law enforcement; 90% in juvenile cases.

## Recent Reforms

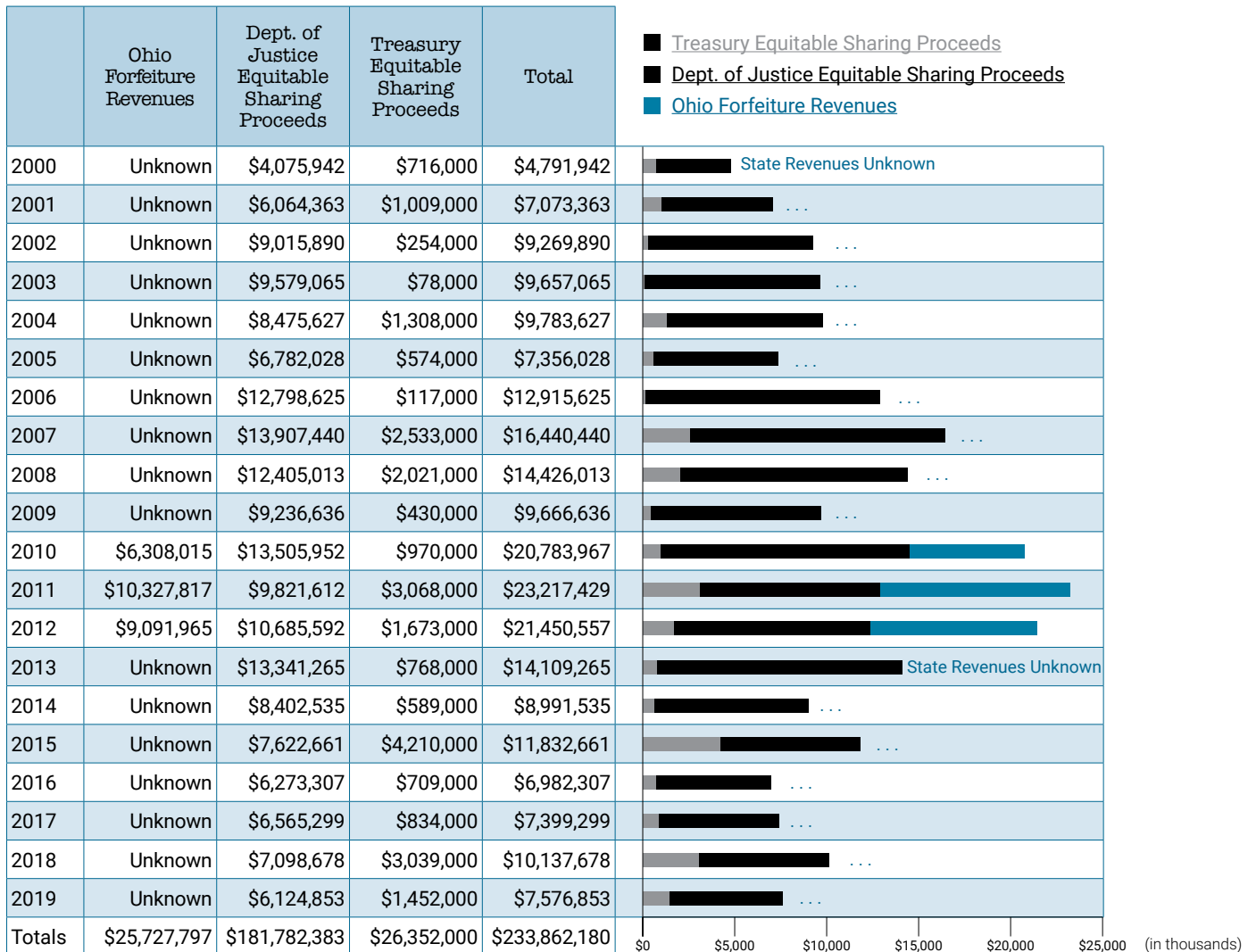
- (2017) HB 347: Raised standard of proof; shifted burden of proof from innocent owners to government; imposed new limits on participation in federal equitable sharing.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2010 and 2012, Ohio law enforcement agencies forfeited more than \$25 million under state law. Between 2000 and 2019, they generated an additional \$208 million from federal equitable sharing, for a total of at least \$233 million in forfeiture revenue. Ohio ranks 41st for its participation in the Department of Justice’s equitable sharing program. However, in 2017, the state prohibited federal forfeiture of locally seized property worth less than \$100,000 for equitable sharing.

**At least \$233 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Ohio's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D</b>	Accessibility of Forfeiture Records	<b>C</b>
Accounting for Forfeiture Fund Spending	<b>C</b>	Penalties for Failure to File a Report	<b>Incomplete<sup>†</sup></b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

<sup>†</sup> No reporting requirements to enforce.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Ohio Law: Key Facts

### Median Value



Ohio does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Ohio does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Ohio does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Ohio does not report how forfeiture funds are spent.

### Data Notes

Agency-level reports of calendar-year forfeitures were obtained via public records request to the Ohio Attorney General. In 2012, the requirement for agencies to report to the AG was eliminated. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# Oklahoma earns a **D-** for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: Up to 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

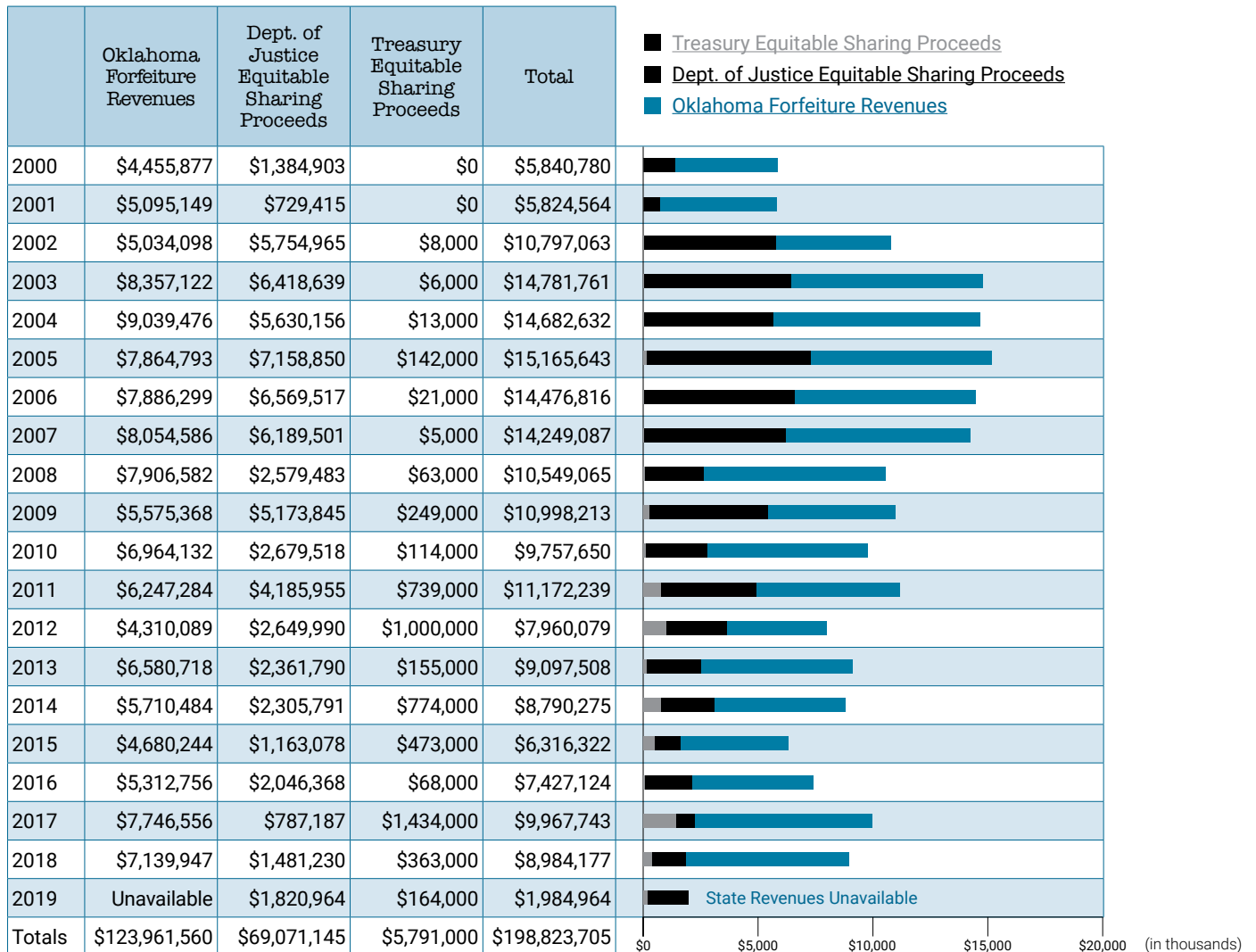
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, Oklahoma law enforcement agencies forfeited nearly \$124 million under state law. Between 2000 and 2019, they generated an additional \$74 million from federal equitable sharing, for a total of at least \$198 million in forfeiture revenue. Oklahoma ranks 14th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$198 million**  
in state and federal  
forfeiture revenue

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Oklahoma's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D+</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>Incomplete<sup>†</sup></b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

<sup>†</sup> No reporting requirements to enforce.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Oklahoma Law: Key Facts

### Median Value



Oklahoma does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

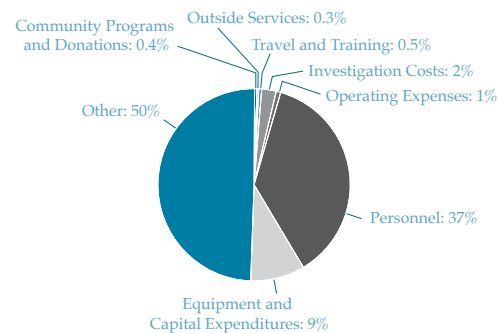
Oklahoma does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Oklahoma does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2005 to 2018, Oklahoma district attorneys spent nearly \$91 million from forfeiture funds—half on other expenses, mostly interagency transfers.

### Data Notes

Data were obtained via public records requests to the Oklahoma District Attorneys Council. Fiscal-year proceeds include cash forfeitures and sold property. All Oklahoma forfeiture proceeds go to DA-managed funds; DAs then transfer seizing agencies their cut. Expenditure figures reported here represent only DAs' expenditures, including those transfers. The data do not indicate how recipient agencies spent those transfers. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Oregon earns a C for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It applies only if an owner contests forfeiture, putting the burden on owners to engage in a costly legal battle and making it easy for the government to forfeit without a conviction. It does not require conviction of the owner, only of “a person.” Once the conviction provision is satisfied, personal property must be linked to the crime by preponderance of the evidence; real property by clear and convincing evidence.
- Stronger protections for the innocent: Generally, the government must prove third-party owners knew about criminal activity connected to their property, but if cash, weapons or negotiable instruments were found near drugs, the owner bears the burden.
- Large profit incentive: 52.5% of forfeiture proceeds go to law enforcement when forfeiture is pursued by local agencies; 47% when forfeiture is pursued by the state.

## Recent Reforms

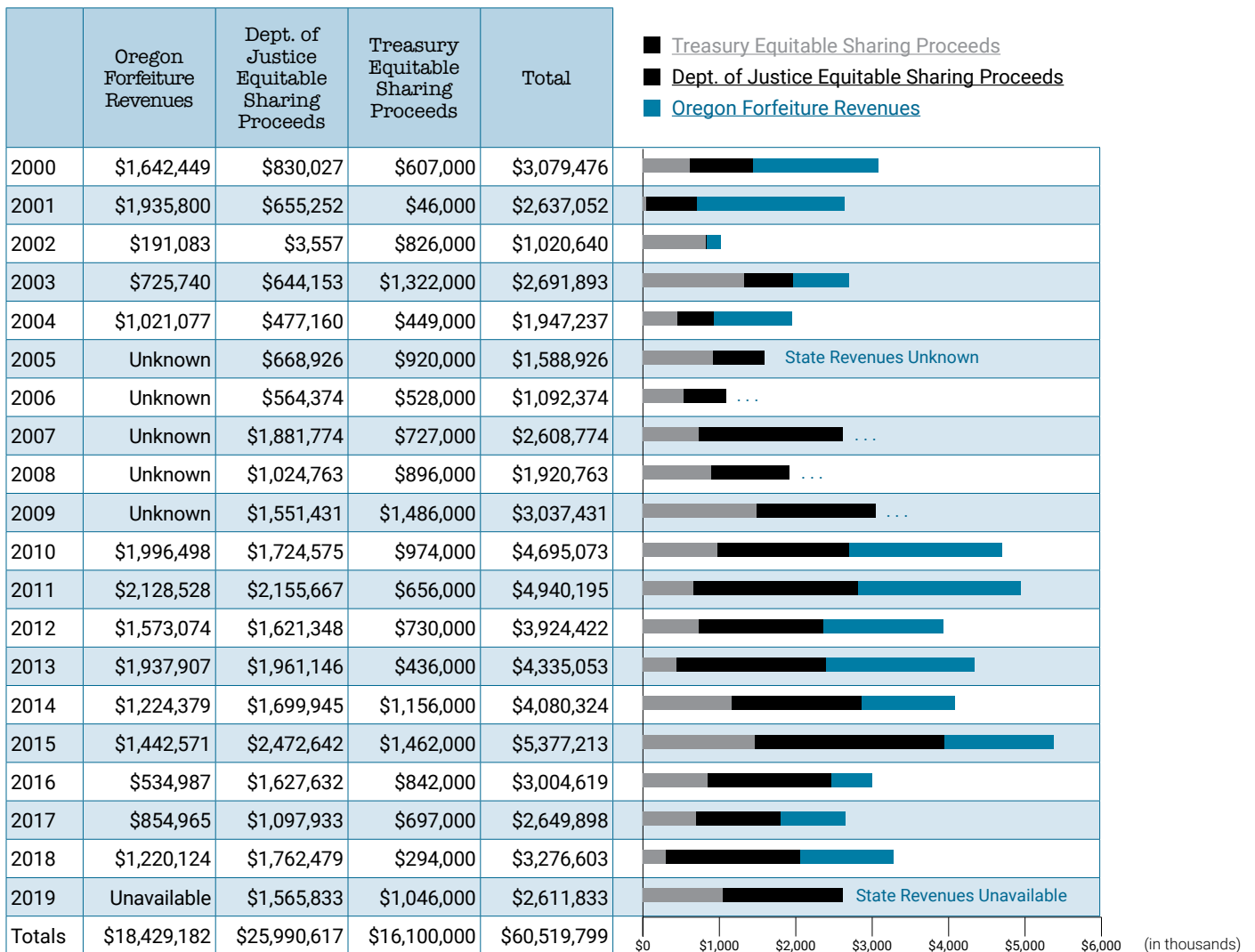
- None.

## State and Federal Forfeiture Revenues, 2000–2019

From 2000 to 2004 and 2010 to 2018, Oregon law enforcement agencies forfeited more than \$18 million under state law. Between 2000 and 2019, they generated an additional \$42 million from federal equitable sharing, for a total of at least \$60 million in forfeiture revenue. Oregon ranks 20th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$60 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Oregon's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>B</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

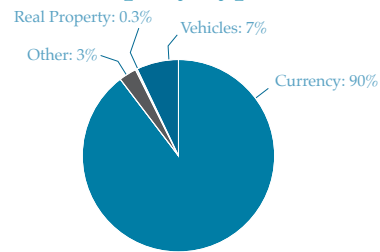
## Forfeitures Under Oregon Law: Key Facts

### Median Value



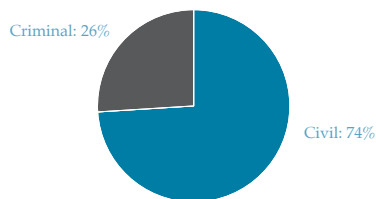
From 2015 to 2018, half of Oregon's currency forfeitures were worth less than \$2,128.

### Property Types



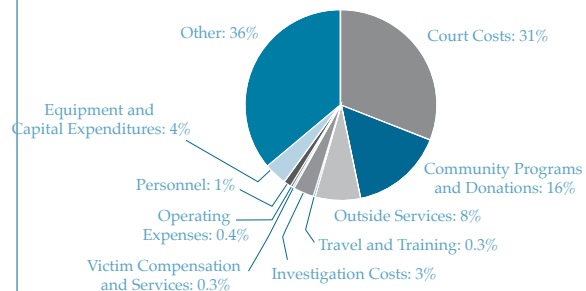
From 2010 to 2018, nine out of every 10 forfeitures in Oregon were of currency.

### Civil vs. Criminal



From 2010 to 2018, at least 74% of forfeited properties were processed under civil, not criminal, forfeiture laws.

### Expenditures



From 2010 to 2018, Oregon law enforcement spent \$7 million from forfeiture funds—36% on other expenses, mostly interagency transfers.

### Data Notes

Forfeiture reports and data are from the Oregon Criminal Justice Commission. Figures for 2000 through 2004 represent forfeitures of cash and proceeds from sales of forfeited property. Figures for 2010 through 2018 represent currency forfeited and value of other forfeited property. All figures are in calendar years. OCJC reportedly lacked funds to produce reports for 2005 through 2009. Expenditures are based on the calendar year property was forfeited. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Pennsylvania earns a D- for its civil forfeiture laws:

- Somewhat higher bar to forfeit: Prosecutors must provide clear and convincing evidence that property is connected to a crime.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

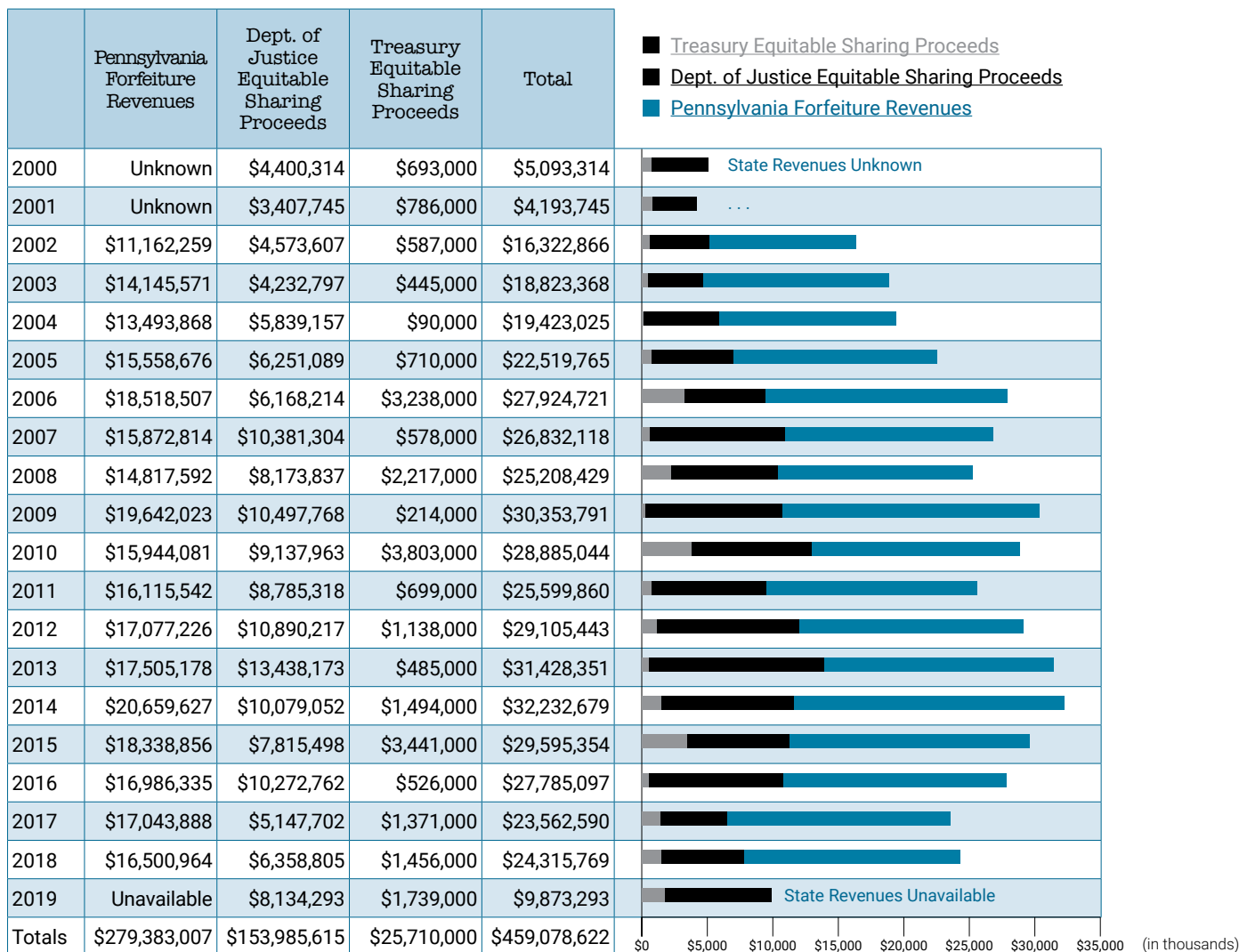
- (2017) SB 8: Raised standard of proof; shifted burden of proof from innocent owners to government; imposed modest limits on participation in federal equitable sharing; strengthened transparency requirements; established motion for return of property; instituted modest limits on law enforcement's use of forfeiture proceeds.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2002 and 2018, Pennsylvania law enforcement agencies forfeited more than \$279 million under state law. Between 2000 and 2019, they generated an additional \$180 million from federal equitable sharing, for a total of at least \$459 million in forfeiture revenue. Pennsylvania ranks 38th for its participation in the Department of Justice's equitable sharing program. However, in 2017, the state prohibited federal adoption of locally seized property for equitable sharing.

**At least \$459 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation. State reporting requirements changed in 2018.

# Pennsylvania's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>B</b>	Penalties for Failure to File a Report	<b>D</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>A</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

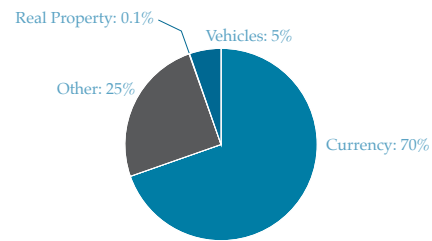
## Forfeitures Under Pennsylvania Law: Key Facts

### Median Value



In 2018, half of Pennsylvania's currency forfeitures were worth less than \$369.

### Property Types



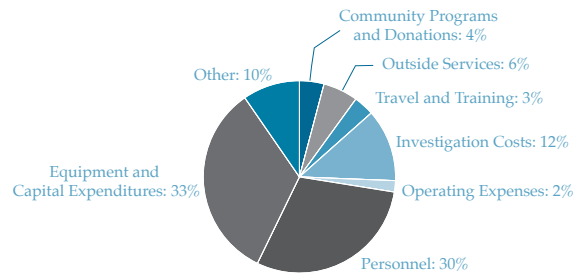
In 2018, seven out of every 10 forfeitures in Pennsylvania were of currency.

### Civil vs. Criminal

**UNKNOWN**

Pennsylvania does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2002 to 2018, Pennsylvania law enforcement spent \$172 million from forfeiture funds—30% on personnel, including salaries and overtime.

### Data Notes

Forfeiture reports were obtained via public records requests to the Pennsylvania Attorney General. Figures represent fiscal-year forfeitures of cash and proceeds from sales of forfeited property. 2018 also includes other forfeited values, including retained and destroyed property. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Rhode Island earns a D- for its civil forfeiture laws:

- Low bar to forfeit: Once the government seizes property, the owner must prove by preponderance of the evidence that it is not connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 90% of forfeiture proceeds go to law enforcement.

## Recent Reforms

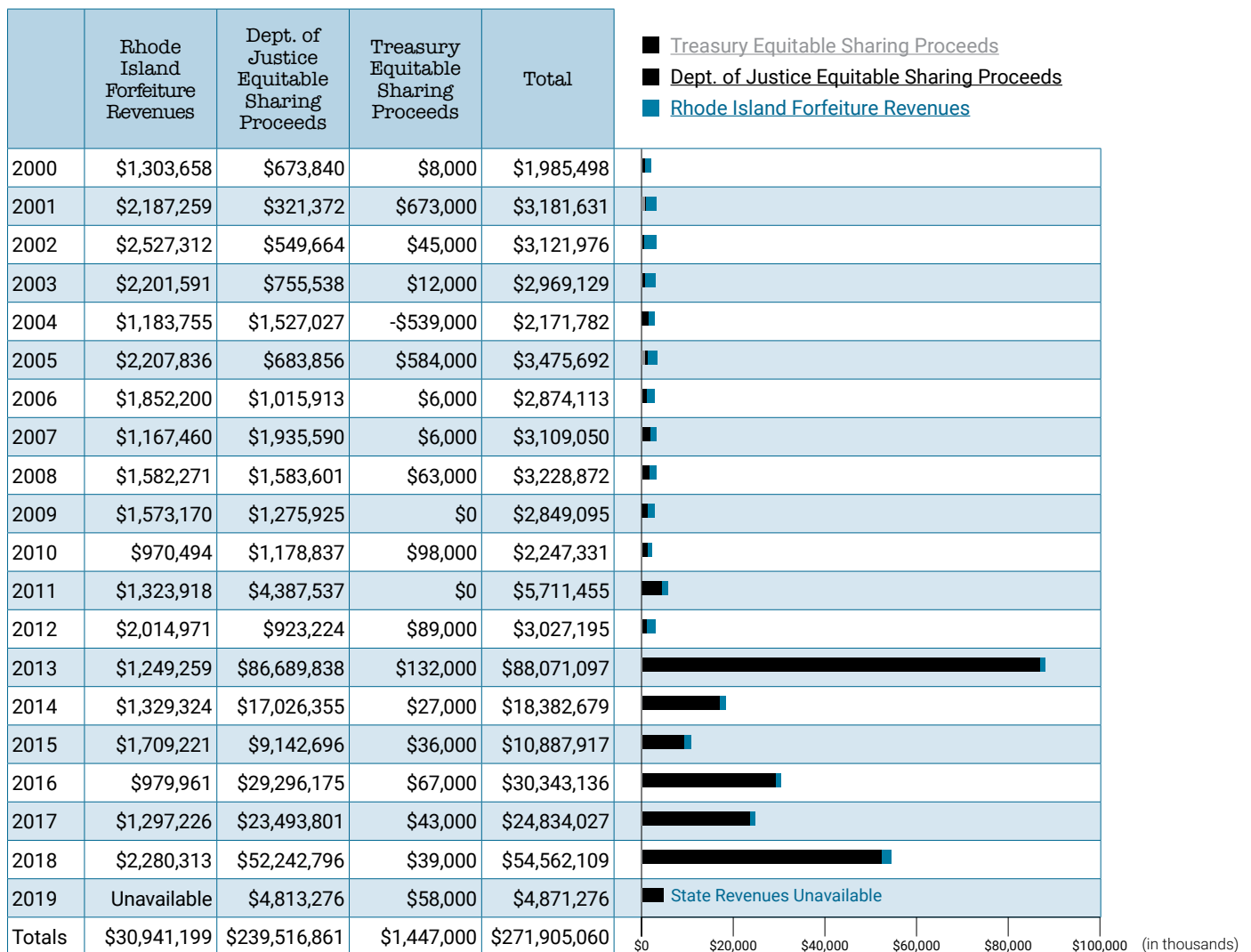
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, Rhode Island law enforcement agencies forfeited nearly \$31 million under state law. Between 2000 and 2019, they generated an additional \$240 million from federal equitable sharing, for a total of at least \$271 million in forfeiture revenue. Rhode Island ranks 51st for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$271 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

## Rhode Island's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

### Forfeitures Under Rhode Island Law: Key Facts

#### Median Value



Rhode Island does not report property-level data necessary to calculate median forfeiture value.

#### Property Types

**UNKNOWN**

Rhode Island does not report the types of property forfeited.

#### Civil vs. Criminal

**UNKNOWN**

Rhode Island does not report whether forfeitures are processed under civil or criminal forfeiture law.

#### Expenditures

**UNKNOWN**

Rhode Island does not report how forfeiture funds are spent.

#### Data Notes

Agency-level forfeiture data were obtained via public records requests to the Rhode Island Attorney General. The calendar-year figures purport to represent total value of forfeited property. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# South Carolina earns a **D-** for its civil forfeiture laws:

- Low bar to forfeit: Once the government seizes property, the owner must prove by preponderance of the evidence that it is not connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 95% of forfeiture proceeds go to law enforcement (75% to police and 20% to prosecutors).

## Recent Reforms

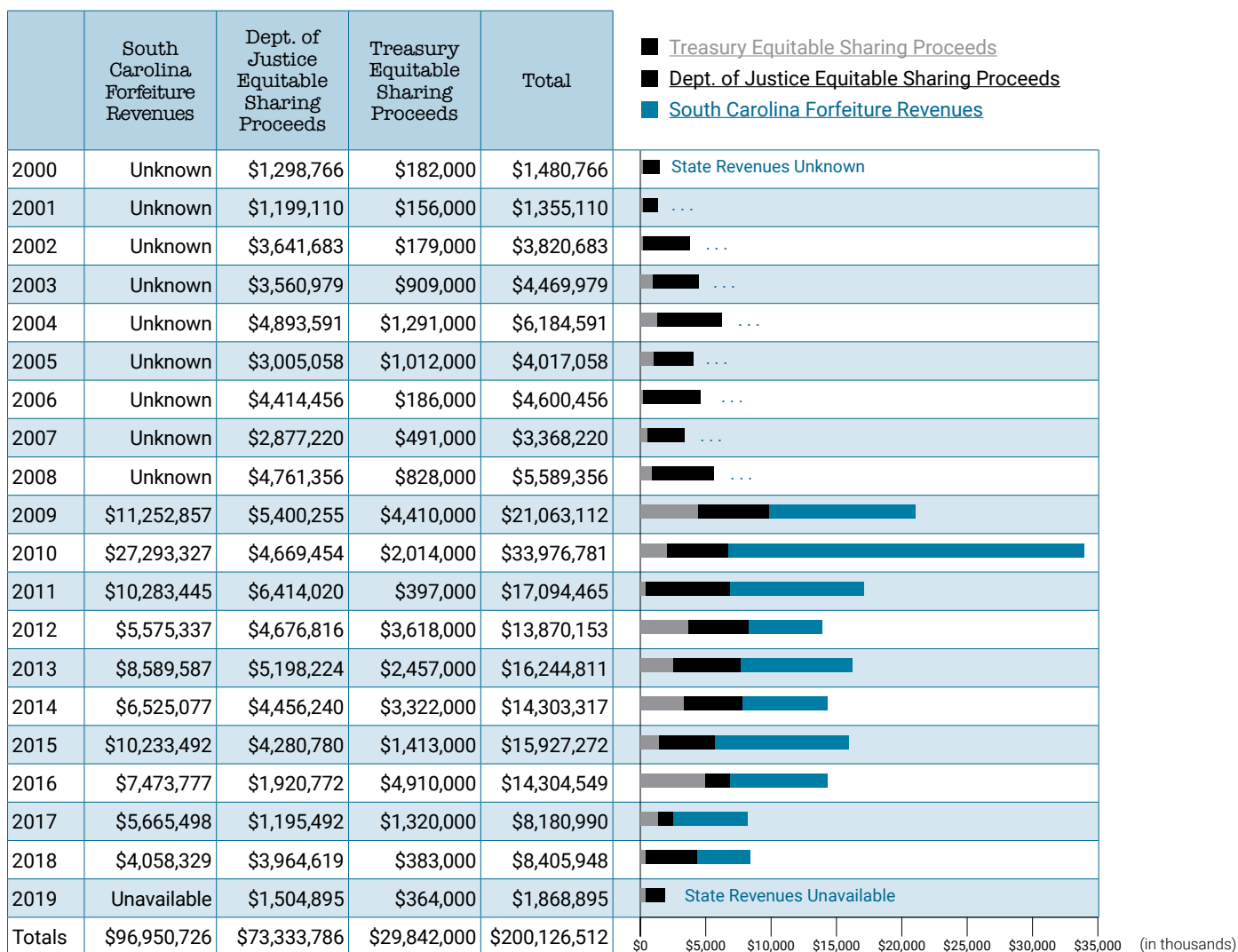
- (2019) State Court Ruling in *Richardson v. \$20,771.00 U.S. Currency*: Found South Carolina’s civil forfeiture laws unconstitutional. At time of publication, case was on appeal to the South Carolina Supreme Court.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2009 and 2018, South Carolina law enforcement agencies forfeited nearly \$97 million under state law. Between 2000 and 2019, they generated an additional \$103 million from federal equitable sharing, for a total of at least \$200 million in forfeiture revenue. South Carolina ranks 17th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$200 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# South Carolina's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D</b>	Accessibility of Forfeiture Records	<b>C</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>Incomplete<sup>†</sup></b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>A</b>

<sup>†</sup> No reporting requirements to enforce.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under South Carolina Law: Key Facts

### Median Value



South Carolina does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

South Carolina does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

South Carolina does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

South Carolina does not report how forfeiture funds are spent.

## Data Notes

Forfeiture records were obtained via public records request to the South Carolina State Treasurer. Figures presented are calculated estimates of statewide forfeiture proceeds based on fiscal-year deposits to the state general fund, which receives, by law, 5% of all forfeiture proceeds. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# South Dakota earns a **D-** for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 100% of forfeiture proceeds go to the attorney general’s drug control fund, from which they are distributed to police for drug enforcement efforts.

## Recent Reforms

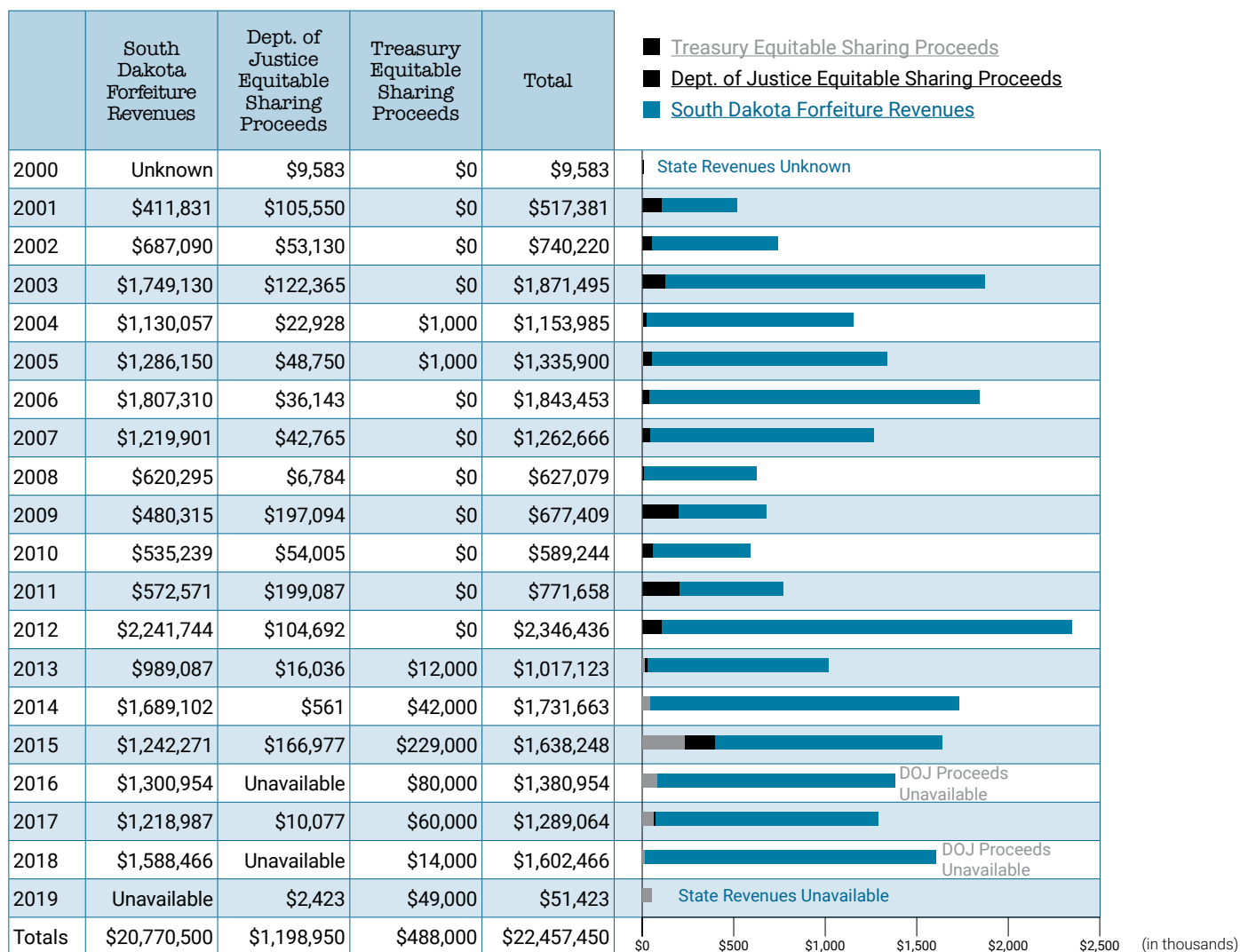
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2001 and 2018, South Dakota law enforcement agencies forfeited nearly \$21 million under state law. Between 2000 and 2019, they generated an additional \$1 million from federal equitable sharing, for a total of at least \$22 million in forfeiture revenue. South Dakota ranks 1st for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$22 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# South Dakota's Forfeiture Transparency and Accountability Report Card

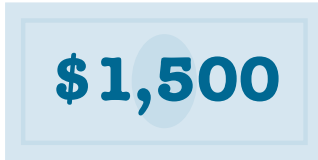
Tracking Seized Property	<b>D+</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>Incomplete<sup>†</sup></b>
Statewide Forfeiture Reports	<b>C</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

<sup>†</sup> No reporting requirements to enforce.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

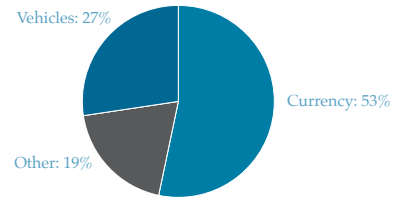
## Forfeitures Under South Dakota Law: Key Facts

### Median Value



From 2015 to 2018, half of South Dakota's currency forfeitures were worth less than \$1,500.

### Property Types



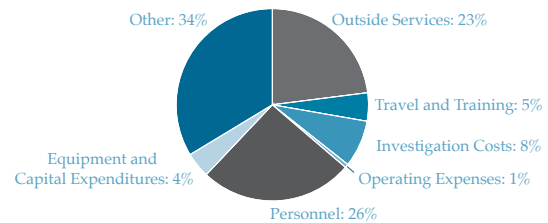
From 2001 to 2018, over half of South Dakota's forfeitures were of currency.

### Civil vs. Criminal

**UNKNOWN**

South Dakota does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2015 to 2018, the South Dakota Attorney General spent nearly \$7 million from forfeiture funds—26% on personnel.

### Data Notes

Property-level reports were obtained via public records request to the South Dakota Attorney General. Figures are in calendar years. Starting in July 2016, the AG ceased reporting forfeited property other than currency and vehicles. Fiscal-year expenditures are from the AG's website and represent the AG's spending from the state's Drug Control Fund. Other expenditures represented grants from the fund to other law enforcement. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Tennessee earns a **D-** for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Limited protections for the innocent: Generally, the government must prove third-party owners knew about criminal activity connected to their property, but owners must prove their own innocence in cases involving vehicles.
- Large profit incentive: Up to 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

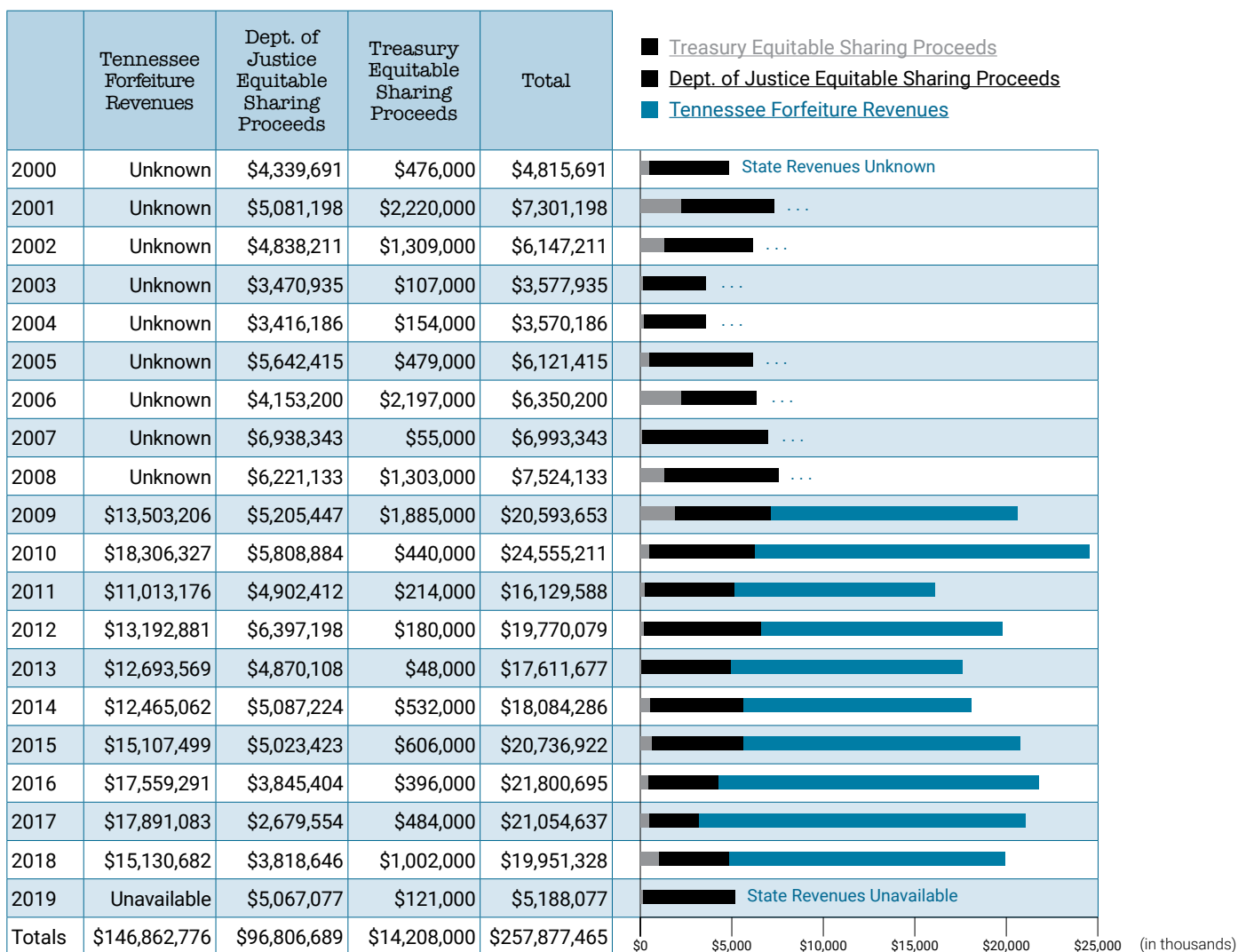
- (2018) HB 2021: Strengthened procedural safeguards for owners by ensuring that property owners get notice of post-seizure probable cause hearings (called forfeiture warrant hearings) and establishing a rebuttable presumption that claimed currency is not subject to forfeiture; created a right to attorney fees for owners whose property is ordered returned.
- (2018) SB 1877/HB 1243: Strengthened transparency requirements.
- (2016) HB 2176: Adopted new transparency requirements.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2009 and 2018, Tennessee law enforcement agencies forfeited more than \$146 million in cash under state law. Between 2000 and 2019, they generated an additional \$111 million from federal equitable sharing, for a total of at least \$257 million in forfeiture revenue. Tennessee ranks 24th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$257 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Tennessee's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>A</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Tennessee Law: Key Facts

### Median Value



From 2015 to 2018, half of Tennessee's currency forfeitures were worth less than \$675.

### Property Types

**UNKNOWN**

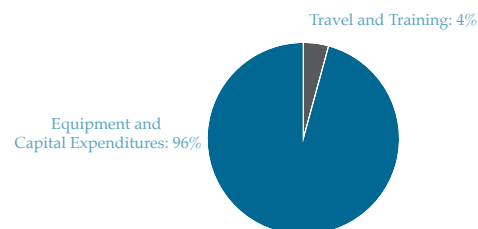
Tennessee property type data were not used for this report.

### Civil vs. Criminal

**UNKNOWN**

Tennessee does not report whether forfeitures are processed under civil or criminal forfeiture laws.

### Expenditures



In 2018, the Tennessee Department of Safety and Homeland Security spent \$148,784 from forfeiture funds—nearly all on equipment and capital expenditures.

### Data Notes

Property-level forfeiture data were obtained from the Tennessee DSHS's forfeiture database via public records request. Proceeds represent only cash forfeited because although DSHS tracks non-cash forfeitures, it does not track proceeds from those forfeitures. Expenditures are from DSHS's website and represent only DSHS expenditures. All figures are in calendar years. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Texas earns a D+ for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: Up to 70% of forfeiture proceeds go to law enforcement in cases where property is forfeited by default; up to 100% where forfeiture is contested.

## Recent Reforms

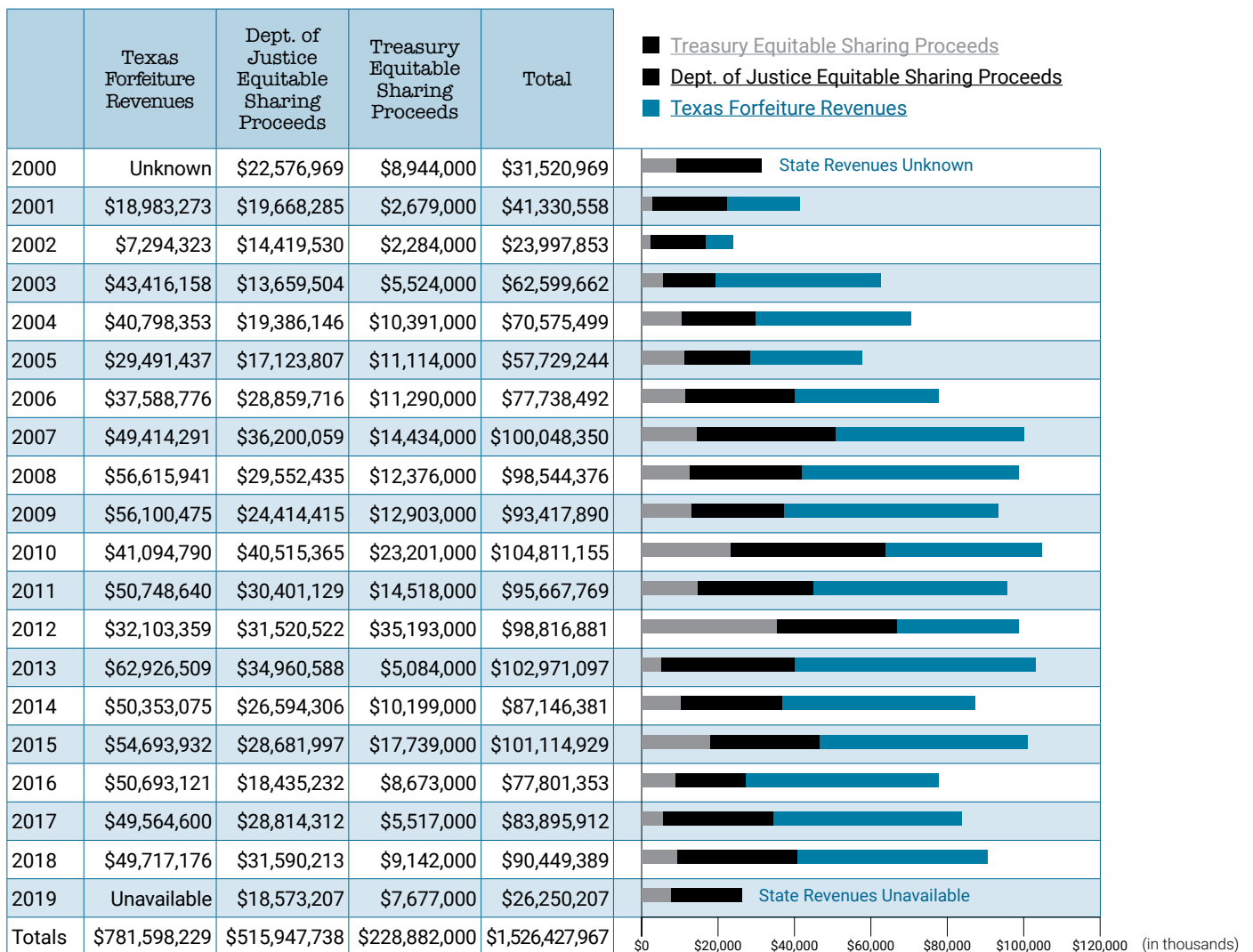
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2001 and 2018, Texas law enforcement agencies forfeited more than \$781 million under state law. Between 2000 and 2019, they generated an additional \$744 million from federal equitable sharing, for a total of at least \$1.5 billion in forfeiture revenue. Texas ranks 47th for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$1.5 billion  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Texas' Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>C*</b>
Statewide Forfeiture Reports	<b>D</b>	Financial Audits of Forfeiture Accounts	<b>A</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Texas Law: Key Facts

### Median Value



Texas does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

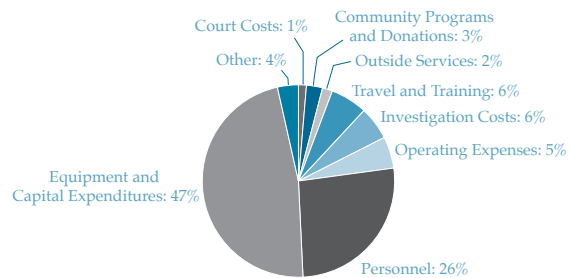
Texas does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Texas does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2013 to 2018, Texas law enforcement spent \$266 million from forfeiture funds—nearly half on equipment and capital expenditures and another quarter on personnel.

### Data Notes

Agency-level forfeiture data were obtained via public records requests to the Texas Attorney General. Figures represent cash and proceeds of sold property. All figures are in the reporting agencies' respective fiscal years. Figures for 2008 through 2018 exclude interest. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# Utah earns a D- for its civil forfeiture laws:

- Somewhat higher bar to forfeit: Prosecutors must provide clear and convincing evidence that property is connected to a crime.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

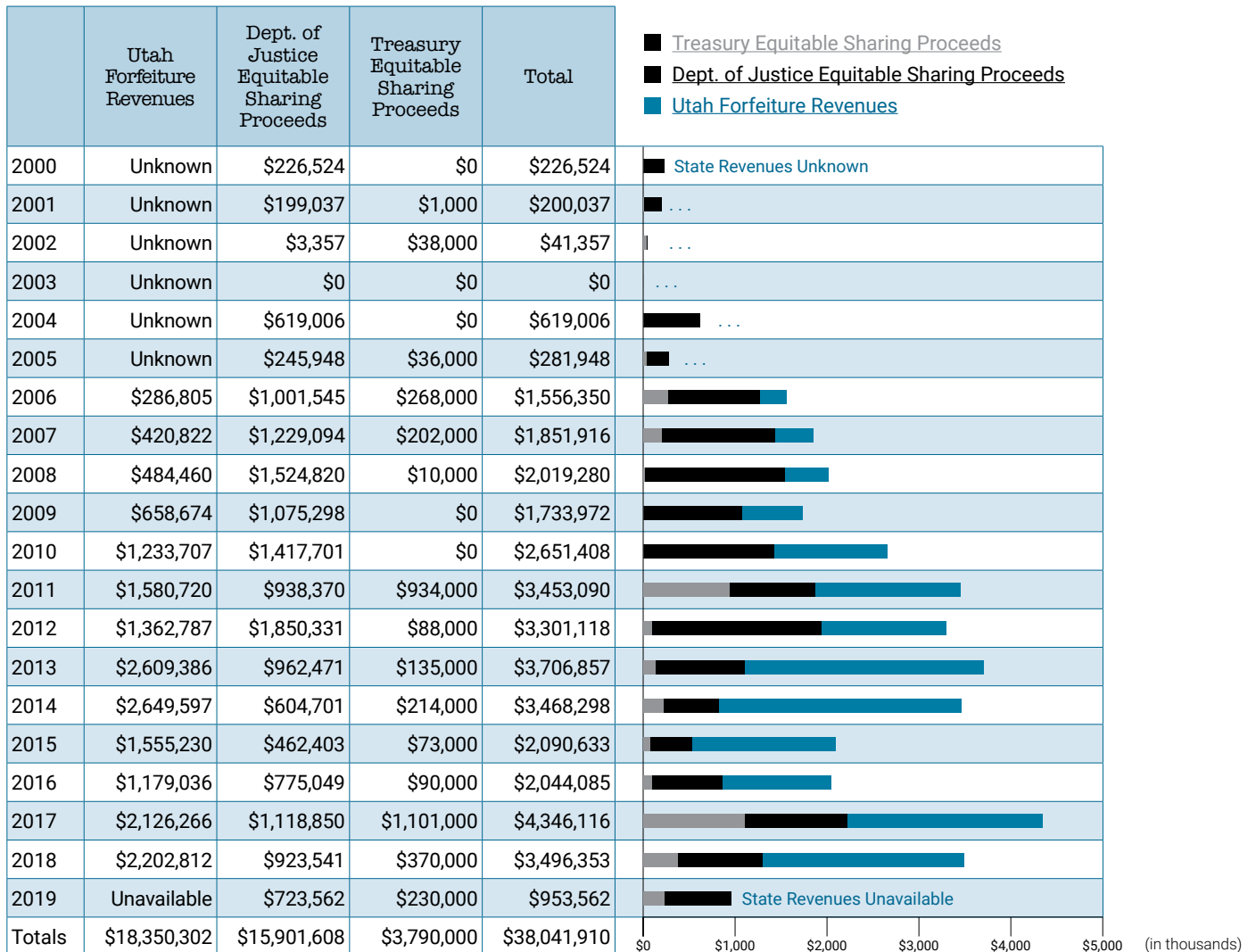
- (2017) SB 87: Mandated that seized property be returned if owner is acquitted; required return of cash under \$10,000 if prosecutors fail to file criminal charges within 60 days of filing for forfeiture and owner filed response; increased availability of attorney fees for innocent owners.
- (2015) SB 52: Strengthened transparency requirements.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2006 and 2018, Utah law enforcement agencies forfeited more than \$18 million under state law. Between 2000 and 2019, they generated an additional \$20 million from federal equitable sharing, for a total of at least \$38 million in forfeiture revenue. Utah ranks 10th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$38 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Utah's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C+</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>D</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

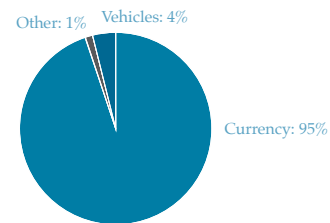
## Forfeitures Under Utah Law: Key Facts

### Median Value



From 2015 to 2018, half of Utah's currency forfeitures were worth less than \$1,136.

### Property Types



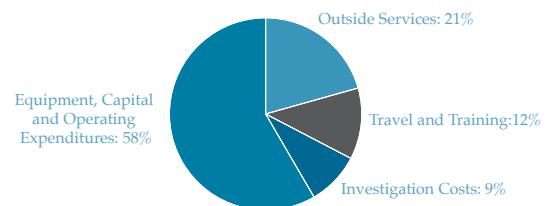
From 2015 to 2018, nearly all of Utah's forfeitures were of currency.

### Civil vs. Criminal

**UNKNOWN**

Utah does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2007 to 2019, Utah law enforcement agencies spent \$13 million from forfeiture funds—58% on capital expenditures, operating expenses and equipment.

### Data Notes

All data and records were obtained via public records requests to the Utah Commission on Criminal and Juvenile Justice. Fiscal years 2006 through 2013 represent case-level forfeiture proceeds. Calendar years 2015 through 2018 represent property-level forfeiture values, including those of retained and destroyed property. Expenditures are in fiscal years and represent grants to agencies from the State Asset Forfeiture Grants program administered by CCJJ. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Vermont earns a C- for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It does not require conviction of the owner, only of “a person,” and it does not apply if the person has agreed to forfeiture to avoid criminal charges. Once the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 45% of forfeiture proceeds go to law enforcement.

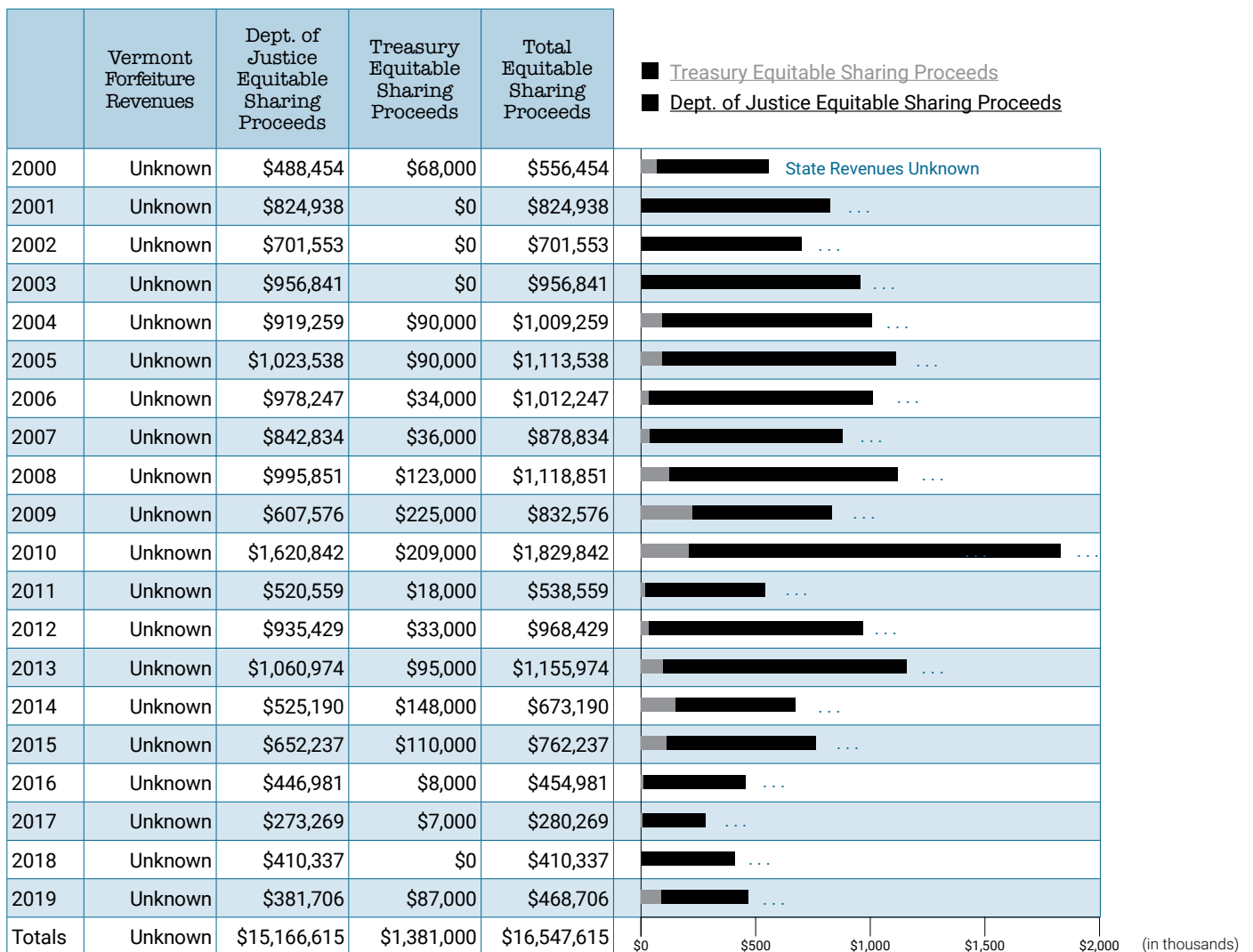
## Recent Reforms

- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2019, Vermont law enforcement agencies generated more than \$16 million in forfeiture revenue from federal equitable sharing. Vermont ranks 12th for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$16 million**  
in federal forfeiture revenue  
2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

## Vermont's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>B+</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

### Forfeitures Under Vermont Law: Key Facts

#### Median Value



Vermont does not report property-level data necessary to calculate median forfeiture value.

#### Property Types

**UNKNOWN**

Vermont does not report the types of property forfeited.

#### Civil vs. Criminal

**UNKNOWN**

Vermont does not report whether forfeitures are processed under civil or criminal forfeiture law.

#### Expenditures

**UNKNOWN**

Vermont does not report how forfeiture funds are spent.

#### Data Notes

Records obtained from the Vermont State Treasurer were sparse and unusable. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports.

# Virginia earns a D- for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It applies only if an owner contests forfeiture, putting the burden on owners to engage in a costly legal battle and making it easy for the government to forfeit without a conviction. It does not require conviction of the owner. Once the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement (90% to the seizing agencies and 10% to the Department of Criminal Justice Services).

## Recent Reforms

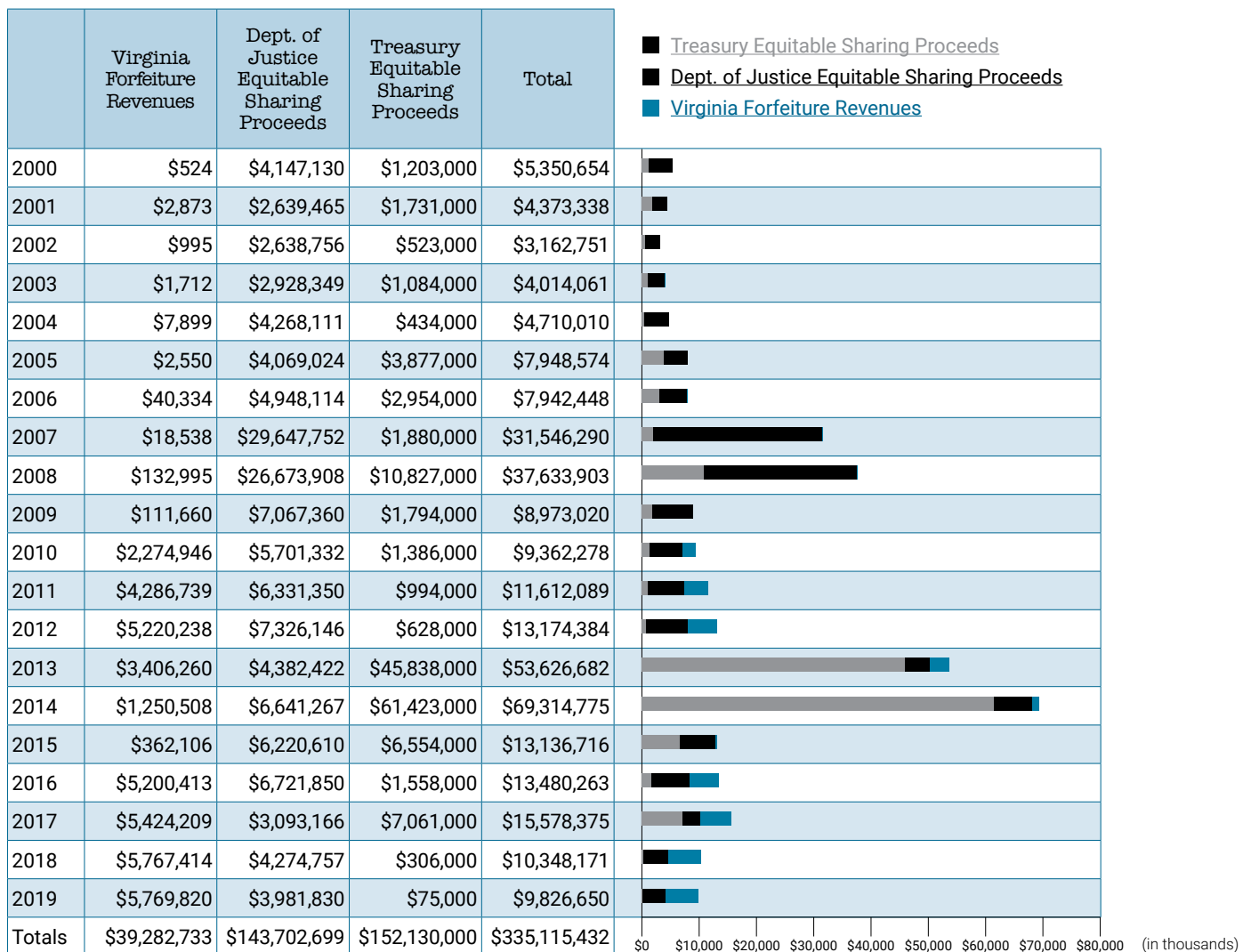
- (2020) HB 1522: Created weak conviction provision.
- (2018) SB 813: Further strengthened transparency requirements.
- (2016) SB 457/HB 771: Raised standard of proof; strengthened transparency requirements; banned use of roadside waivers to pressure motorists into abandoning seized property.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2019, Virginia law enforcement agencies forfeited more than \$39 million under state law and generated an additional \$296 million from federal equitable sharing, for a total of at least \$335 million in forfeiture revenue—averaging more than \$15 million a year. Virginia ranks 31st for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$335 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation. State reporting format changed in 2016.

# Virginia's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>B</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>C</b>	Penalties for Failure to File a Report	<b>F*</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>C</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Virginia Law: Key Facts

### Median Value



Virginia does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

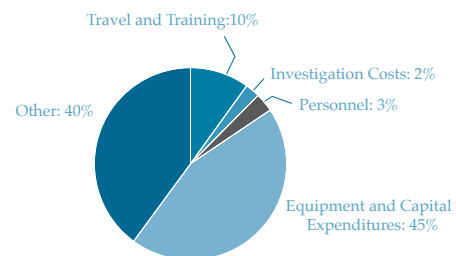
Virginia does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Virginia does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures



From 2007 to 2019, Virginia law enforcement spent \$64 million from forfeiture funds—45% on equipment and capital expenditures.

### Data Notes

Most data and records were obtained via public records requests to the Virginia Department of Criminal Justice Services. Revenue figures for 2016 through 2019 were obtained from reports on DCJS' website. Figures for 2000 through 2015 are conservative estimates of forfeited cash and proceeds from sales of forfeited property and are based on the fiscal year in which assets were reported forfeited or seized. Figures for 2016 through 2019 are based on the fiscal year in which agencies received funds from forfeiture proceeds. Compared to revenues, expenditure figures, also in fiscal years, suggest state forfeiture revenues are vastly underreported. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Washington earns a **D-** for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 90% of forfeiture proceeds go to law enforcement.

## Recent Reforms

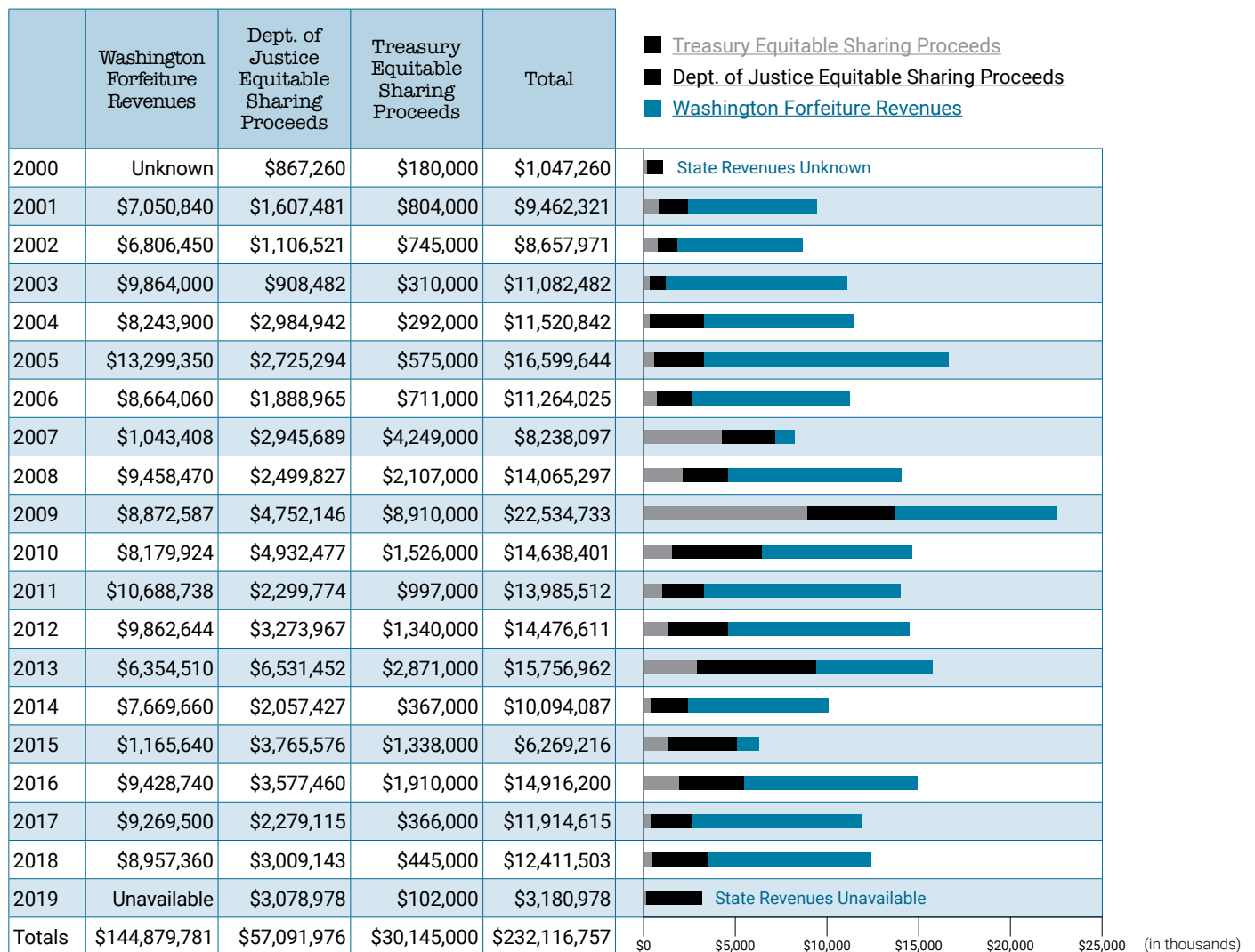
- None.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2001 and 2018, Washington law enforcement agencies forfeited nearly \$145 million under state law. Between 2000 and 2019, they generated an additional \$87 million from federal equitable sharing, for a total of at least \$232 million in forfeiture revenue. Washington ranks 42nd for its participation in the Department of Justice's equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$232 million**  
in state and federal  
forfeiture revenue

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Washington's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C-</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>F</b>	Penalties for Failure to File a Report	<b>F*</b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Washington Law: Key Facts

### Median Value



Washington does not report property-level data necessary to calculate median forfeiture value

### Property Types

**UNKNOWN**

Washington does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

Washington does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Washington does not report how forfeiture funds are spent.

### Data Notes

Agency-level forfeiture data were obtained via public records requests to the Washington State Treasurer. Figures presented are calculated estimates of statewide forfeiture proceeds based on calendar-year deposits to the state general fund, which receives, by law, 10% of all forfeiture proceeds. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.



# West Virginia earns a D- for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

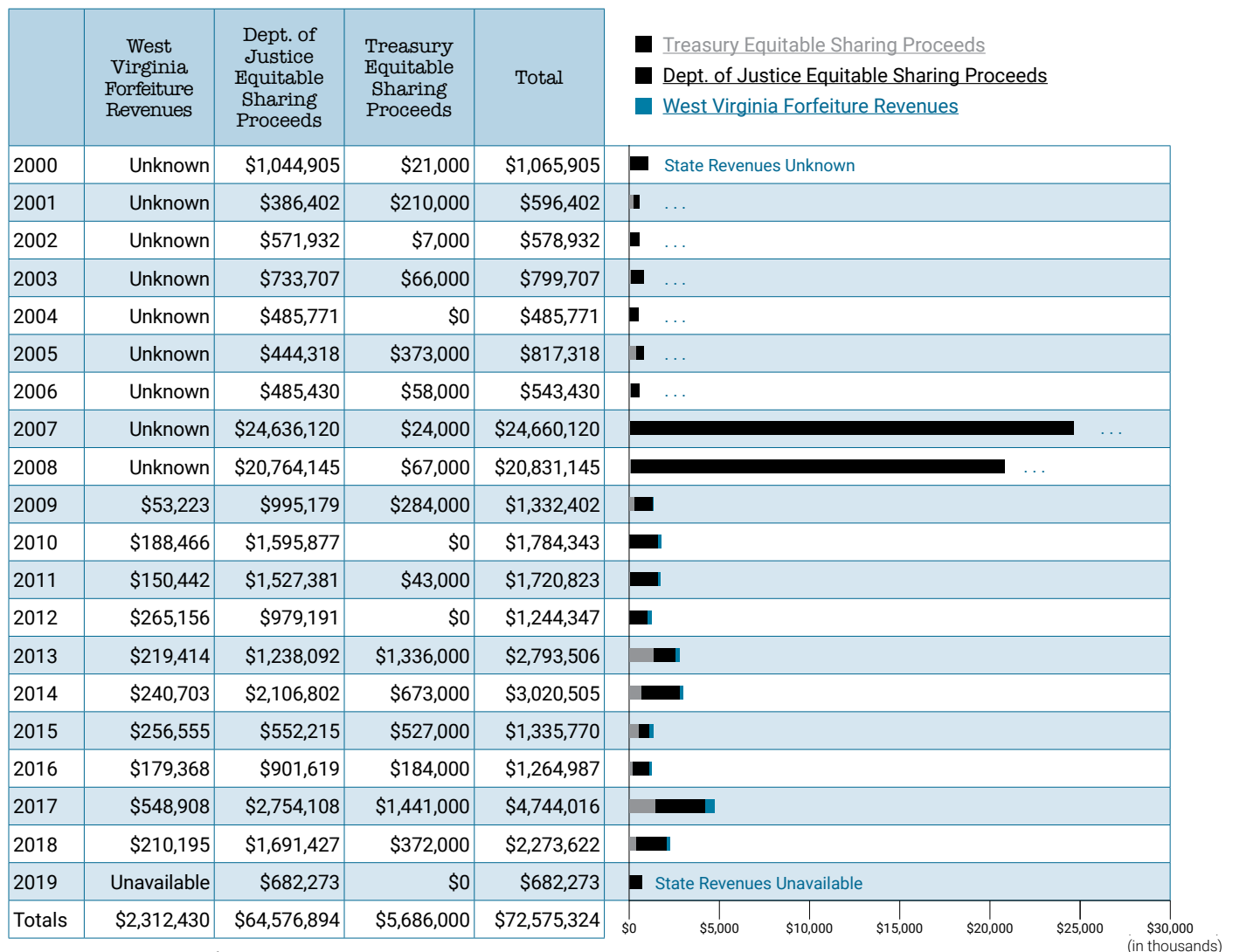
- (2020) HB 4717: Strengthened transparency requirements.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2009 and 2018, the West Virginia State Police and Charleston Police Department forfeited more than \$2 million under state law. Between 2000 and 2019, West Virginia law enforcement agencies generated an additional \$70 million from federal equitable sharing, for a total of at least \$72 million in forfeiture revenue. West Virginia ranks 16th for its participation in the Department of Justice's equitable sharing program. The state does not prevent agencies from using equitable sharing to circumvent state law.

**At least \$72 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# West Virginia's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>?†</b>	Penalties for Failure to File a Report	<b>F*</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>C</b>

† Accounting reports required by the 2020 reform not yet available.

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under West Virginia Law: Key Facts

### Median Value



West Virginia does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

West Virginia does not report the types of property forfeited.

### Civil vs. Criminal

**UNKNOWN**

West Virginia does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

West Virginia does not report how forfeiture funds are spent.

### Data Notes

No statewide records available, but forfeiture records were obtained via public records requests to the WVSP and the city of Charleston. Presented figures represent only combined revenues of the WVSP and the CPD. West Virginia had no reporting requirements before the reporting law enacted in 2020. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Wisconsin earns a **A-** for its civil forfeiture laws:

- Higher bar to forfeit in limited cases: Weak conviction provision falls short of criminal forfeiture (see page 41). It does not require conviction of the owner, only of “a person,” and the court can waive it if the owner does not contest the forfeiture or in other situations, including when the defendant has agreed to help investigators in exchange for immunity. Once the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence.
- Stronger protections for the innocent: The government must prove third-party owners knew about criminal activity connected to their property.
- No profit incentive: All forfeiture proceeds go to fund schools, though agencies can retain up to 50% to pay for forfeiture expenses.

## Recent Reforms

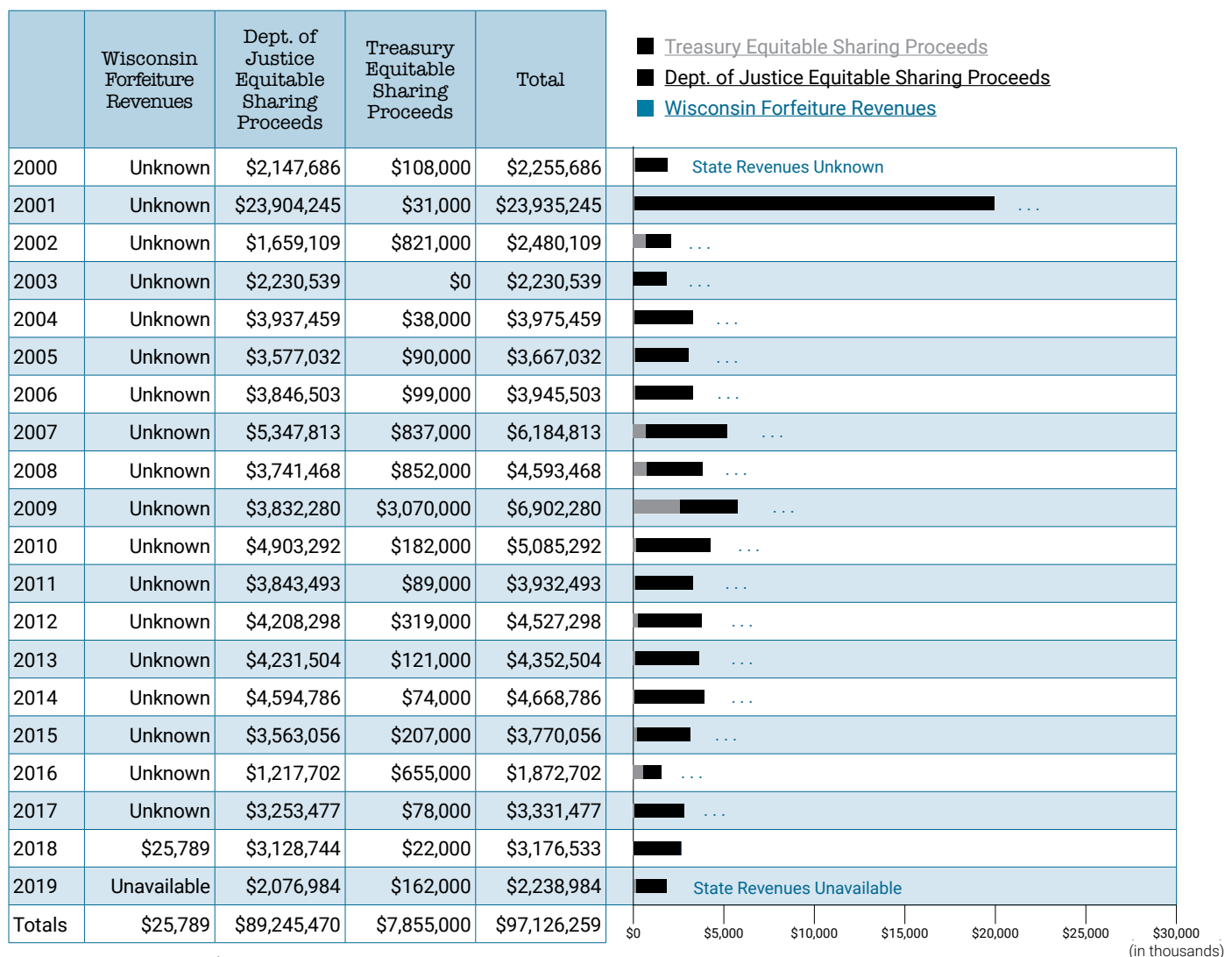
- (2018) AB 122/SB 61: Raised standard of proof; created weak conviction provision; shifted burden of proof from innocent owners to government; imposed modest limits on participation in federal equitable sharing; adopted new transparency requirements; required agencies to document expenses paid with forfeiture funds; required prosecutors to file criminal charges within six months or return seized property; established pretrial hearing for owners; created limited right to attorney fees for owners.

## State and Federal Forfeiture Revenues, 2000–2019

Most forfeitures under Wisconsin law have gone unreported; in 2018, Wisconsin law enforcement agencies forfeited at least \$25,000 under state law. Between 2000 and 2019, they generated an additional \$97 million from federal equitable sharing, for a total of at least \$97 million in forfeiture revenue. Wisconsin ranks 25th for its participation in the Department of Justice’s equitable sharing program. However, in 2018, the state prohibited agencies from receiving federal proceeds unless someone is convicted of the crime that gave rise to the seizure. Unfortunately, several exceptions undermine this reform.

**At least \$97 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Wisconsin's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>D-</b>	Accessibility of Forfeiture Records	<b>B</b>
Accounting for Forfeiture Fund Spending	<b>A+</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>F</b>	Financial Audits of Forfeiture Accounts	<b>F+</b>

<sup>†</sup> Wisconsin law allows agencies to retain up to 50% of forfeiture proceeds to pay for forfeiture expenses. Agencies are required to report on this spending, but the state does not require audits of agency forfeiture funds.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Forfeitures Under Wisconsin Law: Key Facts

### Median Value



Wisconsin does not report property-level data necessary to calculate median forfeiture value.

### Property Types

**UNKNOWN**

Reported forfeitures were too few for further analysis.

### Civil vs. Criminal

**UNKNOWN**

Wisconsin does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**N/A**

Wisconsin expenditure data were not used for this report.

### Data Notes

Property-level forfeiture reports are from the Wisconsin Department of Administration website. Figures represent forfeited currency and proceeds from sales of forfeited property. Only a few agencies filed reports for calendar year 2018, the first reporting period under the new reporting law, and reported forfeitures were too few for further analysis. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# Wyoming earns a D- for its civil forfeiture laws:

- Somewhat higher bar to forfeit: Prosecutors must provide clear and convincing evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: Up to 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

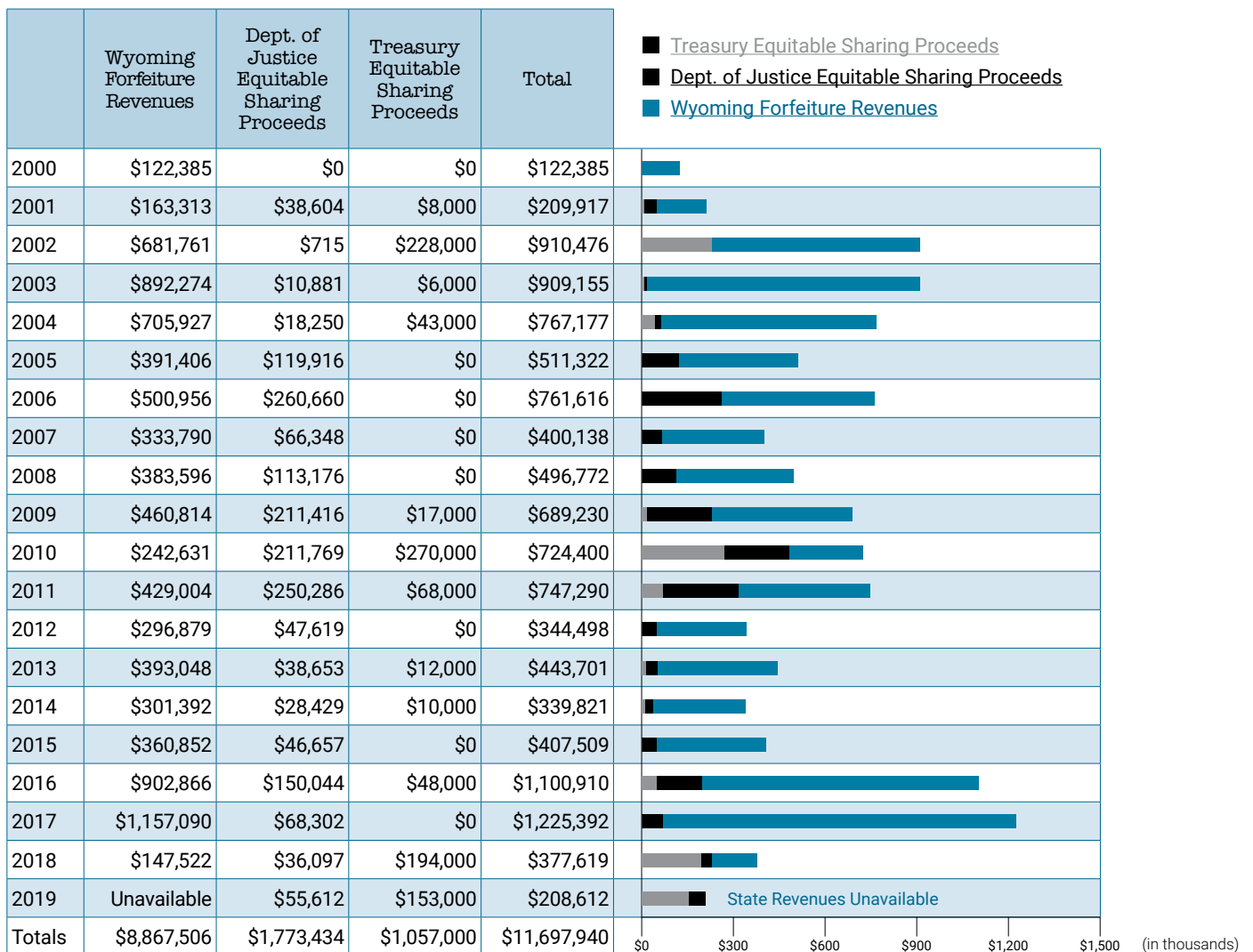
- (2018) HB 61: Banned use of roadside waivers to pressure motorists into abandoning seized property.
- (2016) SF 46: Raised standard of proof; imposed new notice requirements; established probable cause hearing following seizure.

## State and Federal Forfeiture Revenues, 2000–2019

Between 2000 and 2018, Wyoming law enforcement agencies forfeited nearly \$9 million under state law. Between 2000 and 2019, they generated an additional \$2 million from federal equitable sharing, for a total of at least \$11 million in forfeiture revenue. Wyoming ranks 3rd for its participation in the Department of Justice’s equitable sharing program. The state does not prevent state and local agencies from using equitable sharing to circumvent state forfeiture law.

**At least \$11 million  
in state and federal  
forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# Wyoming's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>D</b>
Accounting for Forfeiture Fund Spending	<b>A</b>	Penalties for Failure to File a Report	<b>F</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>F</b>

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

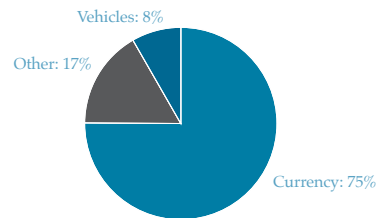
## Forfeitures Under Wyoming Law: Key Facts

### Median Value



From 2015 to 2018, half of Wyoming's currency forfeitures were worth less than \$2,527.

### Property Types



From 2014 to 2018, three-quarters of Wyoming's forfeitures were of currency.

### Civil vs. Criminal

**UNKNOWN**

Wyoming does not report whether forfeitures are processed under civil or criminal forfeiture law.

### Expenditures

**UNKNOWN**

Wyoming expenditure data were not used for this report.

### Data Notes

Property-level seizure data were obtained via public records requests to the Wyoming Attorney General. Figures represent forfeited cash and proceeds from sales of forfeited property and are based on the calendar year in which the forfeiture case was initiated. Equitable sharing data are from DOJ's and Treasury's annual forfeiture reports. Due to differences in reporting and accounting practices, state figures may not match aggregate numbers produced by the state or cover the same 12-month period as the federal data.

# The Federal Government earns a **D-** for its civil forfeiture laws:

- Low bar to forfeit: Prosecutors must prove by preponderance of the evidence that property is connected to a crime.
- Poor protections for the innocent: Third-party owners must prove their own innocence to recover seized property.
- Large profit incentive: 100% of forfeiture proceeds go to law enforcement.

## Recent Reforms

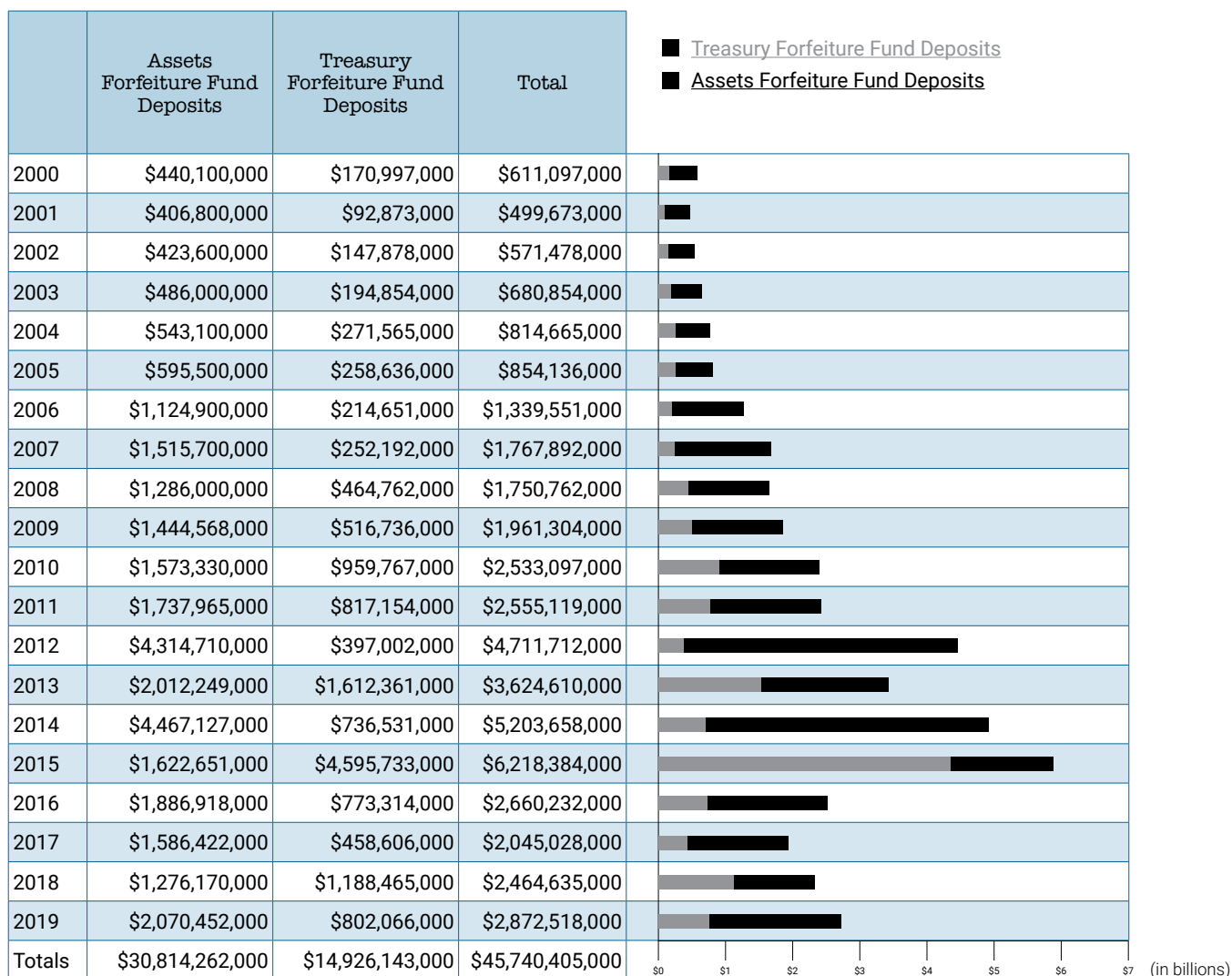
- (2019) HR 3151: Limited forfeiture for currency “structuring” to cases where funds are from an illegal source or used to conceal illegal activity; allowed owners to challenge seizures of currency for alleged structuring at prompt post-seizure hearings. Introduced as Clyde-Hirsch-Sowers RESPECT (Restraining Excessive Seizure of Property through the Exploitation of Civil Asset Forfeiture Tools) Act and named for two IJ clients and victims of IRS structuring seizures; later passed as part of Taxpayer First Act.

## Deposits to Federal Forfeiture Funds, 2000–2019

Between 2000 and 2019, the Department of Justice forfeited more than \$30.8 billion and the Department of the Treasury forfeited nearly \$15 billion, for a total of at least \$45.7 billion in total forfeiture revenue.

**At least \$45.7 billion  
in forfeiture revenue**

2000–2019



All revenue figures include both civil and criminal forfeitures. Revenues are not adjusted for inflation.

# The Department of Justice's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>A-</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>C</b>	Penalties for Failure to File a Report	<b>F*</b>
Statewide Forfeiture Reports	<b>A</b>	Financial Audits of Forfeiture Accounts	<b>A</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## DOJ Forfeitures: Key Facts

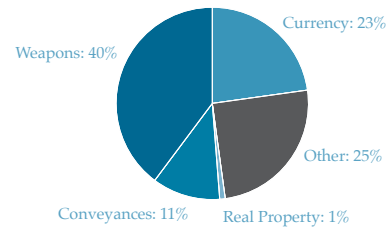
### Median Value



From 2015 to 2019, half of DOJ's currency forfeitures were worth less than \$12,090.

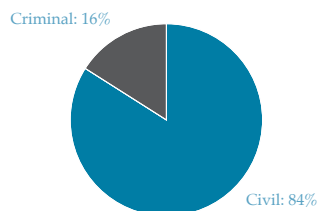
Federal policy does not typically permit cash seizures and forfeitures under \$5,000 unless the person from whom the cash was seized is or was being criminally prosecuted.

### Property Types



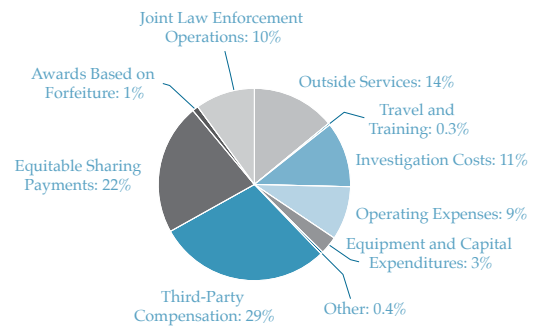
From 2000 to 2019, 23% of DOJ's forfeitures were of currency; an additional 40% were of weapons and ammunition.

### Civil vs. Criminal



From 2000 to 2019, at least 84% of DOJ's forfeited properties were processed under civil, not criminal, forfeiture laws.

### Expenditures



From 2015 to 2019, DOJ spent \$7 billion from forfeiture funds, close to a third on third-party compensation and more than a fifth on equitable sharing payments.

### Data Notes

Revenue data are from DOJ's Annual Financial Statements, available on its website. Data represent all forfeiture revenues deposited into DOJ's Assets Forfeiture Fund and include proceeds shared with state and local law enforcement as part of the equitable sharing program. Expenditures are from DOJ's annual reports to Congress, also available on the Department's website. Third parties include innocent owners, lienholders, banks and victims. Other figures were calculated using DOJ's Consolidated Asset Tracking System and are presented in calendar years.



# The Treasury's Forfeiture Transparency and Accountability Report Card

Tracking Seized Property	<b>C</b>	Accessibility of Forfeiture Records	<b>A</b>
Accounting for Forfeiture Fund Spending	<b>C</b>	Penalties for Failure to File a Report	<b>F*</b>
Statewide Forfeiture Reports	<b>B</b>	Financial Audits of Forfeiture Accounts	<b>A</b>

\* Agencies must file even when they have nothing to report.

For full transparency and accountability grades, visit [www.ij.org/TransparencyReportCards](http://www.ij.org/TransparencyReportCards).

## Treasury Forfeitures: Key Facts

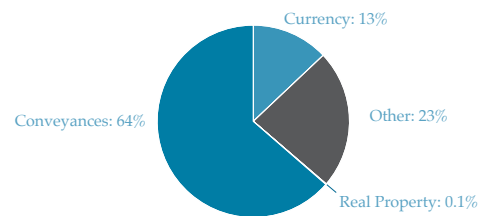
### Median Value

**\$7,320**

From 2015 to 2016, half of Treasury's currency forfeitures were worth less than \$7,320.

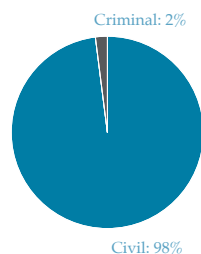
Federal policy does not typically permit cash seizures and forfeitures under \$5,000 unless the person from whom the cash was seized is or was being criminally prosecuted.

### Property Types



From 2000 to 2016, 64% of Treasury's forfeitures were of conveyances, mostly vehicles, but 67% of proceeds were from currency.

### Civil vs. Criminal



From 2000 to 2016, at least 98% of Treasury's forfeited properties were processed under civil, not criminal, forfeiture laws. Nearly all of Treasury's civil forfeiture cases were administrative.

### Expenditures

**UNKNOWN**

Treasury does not report how forfeiture funds are spent.

### Data Notes

Revenue data are from Treasury's Annual Financial Statements, available on its website. Data represent all forfeiture revenues deposited into the Treasury Forfeiture Fund and include proceeds shared with state and local law enforcement as part of the equitable sharing program. Figures were calculated using U.S. Customs and Border Protection's Seized Assets and Case Tracking System and are presented in calendar years.



## Appendix A: State Law Grading Methods

The tables below include the grades each state earns on the three elements that make up the civil forfeiture law grades: (1) standard of proof, (2) innocent owner burden and (3) financial incentive.

Table A.1 shows the grades related to standards of proof. Only three states earn an A grade for having actually or effectively abolished civil forfeiture and replaced it with criminal forfeiture, which requires proof of a property owner's guilt beyond a reasonable doubt. One state, Florida, earns a C+ for requiring that *property's* connection to criminal conduct be proved beyond a reasonable doubt. Nine states demand clear and convincing evidence of property's links to crime, an intermediate standard that earns a C grade. A plurality of states—20—and the federal government earn a D grade with a standard of preponderance of the evidence. Under this standard, the government need only show that it is more likely than not that property is related to a crime. One state, Massachusetts, earns an F grade for requiring mere probable cause, the same low standard needed to justify an arrest, carry out a search or seize property in the first place. The District of Columbia and Kentucky earn C- and D+ grades, respectively, for mixed standards.

Fifteen states have conviction provisions ranging from weak to strong, and these provisions were factored into their standard of proof grades. While such provisions fall short of criminal forfeiture, their inclusion generally resulted in a slight improvement over the grade a state would have received based on its standard of proof alone.

Missouri and Montana earn a B grade for strong conviction provisions that require an owner's conviction—even if the owner does not contest forfeiture—and have no property-based limits. Connecticut's moderate conviction provision earns a B-. It requires a conviction, though not necessarily that of an owner, and applies even if an owner does not contest forfeiture. Connecticut's provision has no property-based limits, though the grading rubric allows for them. The other 12 states earn a C+ grade with weak conviction provisions that do not require conviction of an owner and can be waived by a non-owner or when an owner fails to contest forfeiture. Some set property-based limits.

**Table A.1: Standard of Proof Grades**

Grade	Standard of Proof	States
<b>A</b>	Criminal forfeiture	Nebraska, New Mexico, North Carolina
<b>B</b>	Strong conviction provision <ul style="list-style-type: none"> <li>• Applies even if owner does not contest; no waivers permitted</li> <li>• Requires conviction of owner</li> <li>• Has no property-based limits</li> <li>• Standard to connect property to crime varies</li> </ul>	Missouri, Montana
<b>B-</b>	Moderate conviction provision <ul style="list-style-type: none"> <li>• Applies even if owner does not contest</li> <li>• Does not require conviction of owner, just any person</li> <li>• May have property-based limits</li> <li>• Standard to connect property to crime may vary</li> </ul>	Connecticut
<b>C+</b>	Beyond a reasonable doubt or weak conviction provision <ul style="list-style-type: none"> <li>• Applies only if owner contests, or permits non-owners to waive</li> <li>• Does not require conviction of owner, just any person</li> <li>• May have property-based limits</li> <li>• Standard to connect property to crime varies</li> </ul>	Arkansas, California, Florida*, Iowa, Michigan, Minnesota, New Hampshire, New Jersey, North Dakota, Oregon, Vermont, Virginia, Wisconsin
<b>C</b>	Clear and convincing evidence	Arizona, Colorado, Maryland†, Nevada, New York†, Ohio, Pennsylvania, Utah, Wyoming
<b>C-</b>	Clear and convincing evidence/Preponderance of the evidence	District of Columbia†
<b>D+</b>	Clear and convincing evidence/Probable cause	Kentucky
<b>D</b>	Preponderance of the evidence	Alabama, Alaska, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Mississippi, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, West Virginia, Federal Government
<b>F</b>	Probable cause	Massachusetts

\* Florida does not have a conviction provision; its standard is beyond a reasonable doubt.

† The District of Columbia and Maryland have weak conviction provisions that apply to only a single type of property. New York has a weak conviction provision that applies only to non-drug cases. These provisions were not factored into those states' grades.

With respect to innocent owner claims, the federal government and most states reverse the traditional burden of proof by forcing third-party owners to prove that they are innocent of and had no knowledge of the crime to which their seized property is allegedly linked in order to recover it. As Table A.2 illustrates, only 13 states and the District of Columbia require the government to prove guilt in order to forfeit any type of property, thereby earning an A grade for their innocent owner burdens. Twenty-nine states and the federal government earn F grades for requiring owners to establish their innocence. The other eight states earn C grades for offering limited protections to innocent owners, with the burden generally depending on the type of property.

**Table A.2: Innocent Owner Burden Grades**

Grade	Innocent Owner Burden	States
A	Government's burden	California, Colorado, Connecticut, District of Columbia, Florida, Iowa, Mississippi, Montana, New Mexico, New York, Oregon, Pennsylvania, Utah, Wisconsin
C	Depends on the property	Alabama, Indiana, Kentucky, Maine, Maryland, Michigan, Ohio, Tennessee
F	Owner's burden	Alaska, Arizona, Arkansas, Delaware, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wyoming, Federal Government

Turning to the financial incentive grade, the federal government and most states direct some or all forfeiture proceeds to law enforcement. As shown in Table A.3, 25 states and the federal government earn F grades for directing up to 100% of forfeiture proceeds to law enforcement. In another seven states, between 90 and 95% of proceeds go to law enforcement, earning D grades. And 12 states earn C grades for directing between 45 and 80% to law enforcement. Only six states and the District of Columbia earn A grades for barring forfeiture proceeds from flowing into law enforcement accounts.

**Table A.3: Financial Incentive Grades**

Grade	Proceeds Awarded	States
<b>A</b>	0% to 5%	District of Columbia, Maine, Maryland, Missouri, New Mexico, North Carolina, Wisconsin
<b>B</b>	5.1% to 20%	
<b>C</b>	20.1% to 80%	Alaska, California, Colorado, Connecticut, Florida, Louisiana, Mississippi, Nebraska, New York, Oregon, Texas, Vermont
<b>D</b>	80.1% to 95%	Illinois, Indiana, Minnesota, New Hampshire, Rhode Island, South Carolina, Washington
<b>F</b>	95.1% to 100%	Alabama, Arizona, Arkansas, Delaware, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wyoming, Federal Government

After states were assigned their respective grades, the standard of proof and innocent owner burden grades were combined into a single “burden” grade by creating a weighted average, where standard of proof accounted for 66% of the grade and innocent owner burden for 33%. These weights reflect the relative difficulty each process represents for law enforcement agencies in forfeiting seized properties. The burden grades were then combined with financial incentive grades into a single weighted grade by assigning a weight of one to the burden grades and a weight of three to the financial incentive grades, based on the premise that law enforcement agencies are more encouraged to pursue forfeiture by the percentage of forfeiture proceeds directed to law enforcement accounts than by the relative ease of the forfeiture process. This premise has been borne out by a 2018 study of whether more burdensome and less rewarding state forfeiture laws lead to greater equitable sharing activity, as local law enforcement agencies seek to circumvent good state laws by forfeiting property under federal law.<sup>261</sup> The study tested IJ’s weighting scheme against two other models and found it to be the best predictor of equitable sharing activity.

## Appendix B: Civil Forfeiture Law Citations

Alabama		
Standard of proof	D	Reasonable satisfaction, a standard akin to preponderance of the evidence. <i>Ex parte McConathy</i> , 911 So. 2d 677, 681, 687–88 (Ala. 2005) (overturning forfeiture on the ground that mere suspicion that property was involved in a crime does not meet the “reasonable satisfaction” standard) (citations omitted); <i>see also Alabama Evidence</i> § 3:29 (3rd ed., 2019 update) (explaining that “reasonable satisfaction” is equivalent to the preponderance standard).
Innocent owner burden	C	Depends on the property. Generally, the owner bears the burden of proof. But for real property, the government bears the burden.  Ala. Code § 20-2-93(h).
Financial incentive	F	100%.  Ala. Code § 20-2-93(e).
Overall grade	D-	
Alaska		
Standard of proof	D	The government must show probable cause for the seizure, and the owner must show that the property is not forfeitable by a preponderance of the evidence.  <i>Resek v. State</i> , 706 P.2d 288, 290–91 (Alaska 1985); <i>see also</i> Alaska Stat. §§ 17.30.110, -114(a).
Innocent owner burden	F	Owner.  <i>Resek v. State</i> , 706 P.2d 288, 291 (Alaska 1985); <i>see also</i> Alaska Stat. § 17.30.110(4) (A)–(B) (placing burden on owner with respect to any conveyance).
Financial incentive	C	Up to 75% in general; 100% if the property is worth \$5,000 or less and something other than money.  Alaska Stat. § 17.30.112(c); <i>see also id.</i> § 17.30.122.
Overall grade	D+	
Arizona		
Standard of proof	C	Clear and convincing evidence.  Ariz. Rev. Stat. §§ 13-4311(M), -4312(H)(5)(a).
Innocent owner burden	F	Owner.  Ariz. Rev. Stat. §§ 13-4304(4)–(5), -4311(M), -4312(H)(5)(b).
Financial incentive	F	100%.  Ariz. Rev. Stat. §§ 13-2314.01(D), -.03(D), 13-4315.
Overall grade	D-	

Arkansas		
Standard of proof	C+	Weak conviction provision does not require conviction of an owner, but only of the “person from whom the property [was] seized, ” and a court can waive the provision if the person fails to contest forfeiture or if the person is granted immunity in exchange for helping investigators. After the conviction provision is satisfied, prosecutors must show that the property is subject to forfeiture by a preponderance of the evidence.  Ark. Code Ann. §§ 5-64-505(m)(1), (m)(2)(E), (g)(5)(B)(i).
Innocent owner burden	F	Owner.  Ark. Code Ann. §§ 5-64-505(a)(4)(B), (a)(6)(B), (a)(8)(A).
Financial incentive	F	100% (80% to police and prosecutors, 20% to the state Crime Lab Equipment Fund) up to a maximum of \$250,000 from a single forfeiture. Any amount above \$250,000 goes to the Special State Assets Forfeiture Fund, a non-law enforcement fund.  Ark. Code Ann. § 5-64-505(h)–(i); <i>see also</i> Ark. Op. Att’y. Gen. No. 99-282 (Feb. 24, 2000).
Overall grade	D-	

California		
Standard of proof	C+	Weak conviction provision does not require conviction of an owner, but only of “a defendant”—and only for forfeitures of cash and cash equivalents less than \$40,000, vehicles and real property and only when a claim is filed. After the conviction provision is satisfied, property must be linked to the crime beyond a reasonable doubt.  For contested forfeitures of cash over \$40,000, the standard is clear and convincing evidence. In uncontested forfeitures, the government need only make a “prima facie case”—a very low standard akin to probable cause—that the property is subject to forfeiture.  Cal. Health & Safety Code §§ 11488.4(i)(1)–(4), .5(b)(1). <i>See also</i> <i>People v. \$9,632.50 in U.S. Currency</i> , 75 Cal. Rptr. 2d 125, 128 n.4 (Ct. App. 1998) (saying the standard of proof “in this case” for cash worth less than \$25,000 is beyond a reasonable doubt).
Innocent owner burden	A	Government.  Cal. Health & Safety Code § 11488.5(d).
Financial incentive	C	76% (65% to police, 10% to prosecutors, 1% to a fund controlled by prosecutors).  Cal. Health & Safety Code § 11489(b)(2).
Overall grade	C	



Colorado		
Standard of proof	C	Clear and convincing evidence. Colo. Rev. Stat. §§ 16-13-307(1.7)(c) (public nuisance), -505(1.7)(c) (contraband), -509 (currency), 18-17-106(11) (racketeering).
Innocent owner burden	A	Government. Colo. Rev. Stat. §§ 16-13-303(5.1)(a), (5.2)(c), 16-13-504(2.1)(a), (2.2)(c).
Financial incentive	C	75% (50% to law enforcement, 25% to a grant fund that distributes money to law enforcement). The remaining 25% goes to drug rehabilitation programs. Colo. Rev. Stat. §§ 16-13-311(3)(a)(VII), -506(1), 18-17-106(2)(d). Note: This restriction does not apply to funds received through federal equitable sharing, which is available only in cases where more than \$50,000 is seized. Colo. Rev. Stat. §§ 16-13-306.5, -504.5, -601.
Overall grade	C	

Connecticut		
Standard of proof	B-	Moderate conviction provision applies in drug, identity theft and sex-trafficking cases, even when forfeiture is uncontested. The provision does not require conviction of an owner, but only of a "person." For other crimes, the owner must be convicted. After the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence. Conn. Gen. Stat. Ann. §§ 54-33g(a)-(c), (f), h(b), 554-36(c), h(c), o(b), o(c) ("court shall hold a hearing"), p(b)-(c).
Innocent owner burden	A	Government. Conn. Gen. Stat. §§ 54-33g(a)-(b), -36h(b)-(c), o(b)-(c), p(b)-(c); <i>see, e.g., State v. One 2002 Chevrolet Coupe</i> , No. CV2200243, 2003 WL 824266, at *3-4 (Conn. Super. Ct. Jan. 23, 2003) (holding innocent owner could recover her property because state failed to prove by clear and convincing evidence that she knew about her son's illegal activities).
Financial incentive	C	69.5% (59.5% to police, 10% to prosecutors) in drug cases. In other cases, none. <i>Compare</i> Conn. Gen. Stat. § 54-36i(c) <i>with id.</i> §§ 54-33g(d)-(e), -36o(g), p(g).
Overall grade	C	

Delaware		
Standard of proof	D	The government must show probable cause for the seizure, at which point a rebuttable presumption in favor of forfeiture arises. The owner can rebut that presumption by a preponderance of the evidence. Del. Code Ann. tit. 16, § 4784(a)-(j); Del. Super. Ct. Civ. R. 71.3; <i>Brown v. State</i> , 214 A.3d 922, 926-27 (Del. 2019); <i>Brown v. State</i> , 721 A.2d 1263, 1265 (Del. 1998); <i>In re One 1987 Toyota</i> , 621 A.2d 796, 799 (Del. Super. Ct. 1992).
Innocent owner burden	F	Owner. Del. Code Ann. tit. 16, §§ 4784(a)(7), 4785(a); Del. Super. Ct. Civ. R. 71.3(d); <i>Brown v. State</i> , 214 A.3d 922, 926-27 (Del. 2019); <i>Brown v. State</i> , 721 A.2d 1263, 1265 (Del. 1998).
Financial incentive	F	Up to 100%. Del. Code Ann. tit. 11, §§ 4110-4111; <i>id.</i> tit. 16, § 4784(f).
Overall grade	D-	

<b>District of Columbia</b>		
Standard of proof	C-	In general, preponderance of the evidence. The standard of proof increases to clear and convincing evidence for vehicles, real property and currency up to \$1,000. Weak conviction provision requires conviction of “an owner,” but only for contested forfeitures of a primary residence.  D.C. Code §§ 41-308(d)(1), (4), -302(c); <i>see id.</i> § 41-305(c) (procedure when uncontested).
Innocent owner burden	A	Government.  D.C. Code §§ 41-302(b), -308(d)(1).
Financial incentive	A	No financial incentive. All currency and proceeds from sales of forfeited property must be deposited in the general fund.  D.C. Code § 41-310(a)(2)–(3).
Overall grade	B+	
<b>Florida</b>		
Standard of proof	C+	Beyond a reasonable doubt.  Fla. Stat. § 932.704(8); <i>Hudson v. City of Sunrise</i> , 237 So. 3d 1031, 1034 n.2 (Fla. Dist. Ct. App. 2018).
Innocent owner burden	A	Government.  Fla. Stat. § 932.703(7); <i>Gomez v. Vill. of Pinecrest</i> , 41 So. 3d 180, 184–85 & n.2 (Fla. 2010) (explaining that Florida law changed in 1995 to place the burden of proof on the seizing agency).
Financial incentive	C	Up to 75%.  Fla. Stat. § 932.7055(5)(c)(3).
Overall grade	C	
<b>Georgia</b>		
Standard of proof	D	Preponderance of the evidence.  Ga. Code Ann. § 9-16-17(a)(1).
Innocent owner burden	F	Owner. However, in cases involving a jointly owned vehicle, no innocent owner claim is allowed.  Ga. Code Ann. § 9-16-17(a)(2).
Financial incentive	F	Up to 100%.  Ga. Code Ann. § 9-16-19(f).
Overall grade	D-	
<b>Hawaii</b>		
Standard of proof	D	Preponderance of the evidence.  Haw. Rev. Stat. § 712A-12(8).
Innocent owner burden	F	Owner.  Haw. Rev. Stat. § 712A-12(8).
Financial incentive	F	100% (25% to police, 25% to prosecuting attorney, 50% to attorney general for various law enforcement projects) up to a maximum of \$3 million per year.  Haw. Rev. Stat. § 712A-16(2)–(4).
Overall grade	D-	

Idaho		
Standard of proof	D	Preponderance of the evidence. Idaho Code §§ 37-2744(d), -2744A(d)(4).
Innocent owner burden	F	Owner. Idaho Code §§ 37-2744(d)(3)(D)(IV) (conveyances), -2744A(d)(4) (real property).
Financial incentive	F	Up to 100%. Idaho Code §§ 37-2744(e), 57-816(1).
Overall grade	D-	
Illinois		
Standard of proof	D	In general, preponderance of the evidence. The standard of proof increases to clear and convincing evidence in certain situations where a related criminal case results in acquittal or non-indictment. Forfeiture is unavailable for currency under \$500 related to drug possession offenses and under \$100 for all other offenses. 725 Ill. Comp. Stat. 150/9(G), (G-5), (G-10), 720 Ill. Comp. Stat. 570/505(d).
Innocent owner burden	F	Owner. At pretrial innocent owner hearings, the owner bears the burden of proof. However, if the forfeiture action goes to trial, the government must prove the owner's culpability or negligence, which is not a crime. 725 Ill. Comp. Stat. 150/9.1, 150/9(G).
Financial incentive	D	90%. 725 Ill. Comp. Stat. 150/13.2.
Overall grade	D-	
Indiana		
Standard of proof	D	Preponderance of the evidence. Ind. Code § 34-24-1-4(a); <i>see also Serrano v. State</i> , 946 N.E.2d 1139, 1143–44 (Ind. 2011) (requiring state to prove a close “nexus” between vehicle and drugs); <i>Lipscomb v. State</i> , 857 N.E.2d 424, 428 (Ind. Ct. App. 2006) (requiring state to show connection between money and drugs).
Innocent owner burden	C	Depends on the property. Generally, the owner bears the burden of proof. But for vehicles or equipment allegedly involved in the recording of a sex crime, the government bears the burden. Ind. Code §§ 34-24-1-1(a)(10), (b), (c), (e), 34-24-1-4(a).
Financial incentive	D	Up to 93%, notwithstanding a state constitutional provision requiring that “all forfeitures” be paid into the Common School Fund. Ind. Code §§ 34-24-1-6, 34-24-1-4(c)–(d); <i>compare</i> Ind. Const. art. 8, § 2 <i>with Horner v. Curry</i> , 125 N.E.3d 584, 597–607 (Ind. 2019).
Overall grade	D	

<b>Iowa</b>		
Standard of proof	C+	Weak conviction provision does not require conviction of an owner, but only “a conviction” of any person—and only for forfeitures of property worth less than \$5,000 and only when a claim is filed. After the conviction provision is satisfied, prosecutors must show that the property is subject to forfeiture by clear and convincing evidence.  Iowa Code Ann. §§ 809A.1(4), 809A.12A(1), (1)(a), (1)(d), (8), 809A.13(7).
Innocent owner burden	A	Government.  Iowa Code Ann. §§ 809A.12(7), .13(7).
Financial incentive	F	100%.  Iowa Code Ann. § 809A.17.
Overall grade	D-	
<b>Kansas</b>		
Standard of proof	D	Preponderance of the evidence.  Kan. Stat. Ann. § 60-4113(h).
Innocent owner burden	F	Owner.  Kan. Stat. Ann. §§ 60-4112(h), (l), 60-4113(h).
Financial incentive	F	100%.  Kan. Stat. Ann. § 60-4117; Kan. Att’y Gen. Op. No. 2018-14, 2018 WL 4922703, at *4 (Oct. 5, 2018) (concluding that forfeiture proceeds may not be used for normal operating expenses such as salaries for regular employees); cf. Kan. Att’y Gen. Op. No. 2007-15, 2007 WL 2021740, at *2 (July 6, 2007) (determining that forfeiture proceeds may be applied to special law enforcement projects but cannot be used as a regular funding source).
Overall grade	D-	
<b>Kentucky</b>		
Standard of proof	D+	In general, the government need only show “slight evidence of traceability” to a crime, a standard akin to probable cause, at which point the owner must show the property’s innocence by clear and convincing evidence. The government’s standard of proof increases to clear and convincing evidence for real property.  Ky. Rev. Stat. Ann. § 218A.410(1)(j); <i>Robbins v. Commonwealth</i> , 336 S.W.3d 60, 64–65 (Ky. 2011); <i>Gritton v. Commonwealth</i> , 477 S.W.3d 603, 605 (Ky. Ct. App. 2015) (confirming this procedure generally applies to forfeitures of other personal property as well as of money).
Innocent owner burden	C	Depends on the property. Generally, the owner bears the burden of proof. But for real property, the government bears the burden.  Ky. Rev. Stat. Ann. § 218A.410(1)(j); <i>Robbins v. Commonwealth</i> , 336 S.W.3d 60, 64–65 (Ky. 2011).
Financial incentive	F	100% (85% to the law enforcement agencies seizing the property, 15% to the Office of the Attorney General or to the Prosecutors Advisory Council).  Ky. Rev. Stat. Ann. § 218A.420(4).
Overall grade	D-	

Louisiana		
Standard of proof	D	Preponderance of the evidence. La. Stat. Ann. § 40:2612(G).
Innocent owner burden	F	Owner. La. Stat. Ann. § 40:2605.
Financial incentive	C	80% (60% to the law enforcement agencies that seized the property, 20% to the district attorney's office(s) that handled the forfeiture action). The remaining 20% goes to the criminal court fund. La. Stat. Ann. § 40:2616(B)(3).
Overall grade	D+	
Maine		
Standard of proof	D	Preponderance of the evidence. Me. Stat. tit. 15 § 5822(3).
Innocent owner burden	C	Depends on the property. Generally, the owner bears the burden of proof. But in cases involving a family's primary residence, the government must show that any spouse or minor child co-owner knew about or consented to the owner's illegal conduct. Me. Stat. tit. 15 §§ 5821(7)(A), 5822(3).
Financial incentive	A	No financial incentive. All forfeiture proceeds go to the general fund unless another transfer is specifically approved by the court and by the governor or attorney general (in the case of a state forfeiture), or by the court and the relevant governmental entity (in the case of county-level or municipal-level forfeitures) with the written consent of the attorney general. However, reports indicate that almost no proceeds are, in fact, being deposited in the general fund (see articles below). Me. Stat. tit. 15 §§ 5822(4), 5824. <i>See</i> Neumann, D. (2018a, Oct. 18). Maine law enforcement fails to report money seized in drug busts. <i>Maine Beacon</i> . <a href="http://mainebeacon.com/maine-law-enforcement-fails-to-report-money-seized-in-drug-busts/">http://mainebeacon.com/maine-law-enforcement-fails-to-report-money-seized-in-drug-busts/</a> and Neumann, D. (2018b, Oct. 26). Maine law enforcement is keeping drug bust money meant for state general fund. <i>Maine Beacon</i> . <a href="http://mainebeacon.com/maine-law-enforcement-is-keeping-drug-bust-money-meant-for-state-general-fund/">http://mainebeacon.com/maine-law-enforcement-is-keeping-drug-bust-money-meant-for-state-general-fund/</a>
Overall grade	B+	
Maryland		
Standard of proof	C	In general, clear and convincing evidence. Weak conviction provision requires conviction of an owner, but only for forfeitures of a principal family residence. When the owners of the residence are married, both spouses must be convicted. The provision can be waived if the owner fails to appear in court. Md. Code Ann., Crim. Proc. §§ 12-103(d)(1), (d)(2), (e), 12-312(a–b).
Innocent owner burden	C	Depends on the property. Generally, the owner bears the burden of proof. But for vehicles, real property, and property intended for or traceable to drug transactions, the government must show that the property was used in violation of the law “with the owner's actual knowledge.” Md. Code Ann., Crim. Proc. §§ 12-102(a)(4), (11–12), 12-103, -312(b).
Financial incentive	A	No financial incentive. Md. Code Ann., Crim. Proc. § 12-403(c)–(e).
Overall grade	B+	

<b>Massachusetts</b>		
Standard of proof	F	Probable cause. Mass. Gen. Laws ch. 94C, § 47(d); <i>Commonwealth v. One 2004 Audi Sedan Auto.</i> , 921 N.E.2d 85, 88–90, 92 (Mass. 2010).
Innocent owner burden	F	Owner. Mass. Gen. Laws ch. 94C, § 47(d).
Financial incentive	F	Up to 100%. Mass. Gen. Laws ch. 94C, § 47(d).
Overall grade	F	
<b>Michigan</b>		
Standard of proof	C+	Weak conviction provision does not require conviction of an owner, but only of a “defendant”—and only for contested forfeitures of property worth less than \$50,000. After the conviction provision is satisfied, property must be linked to drug crimes by clear and convincing evidence and to other crimes by a preponderance of the evidence. Mich. Comp. Laws §§ 333.7521a(1–2), a(6), (2), 600.4707(6).
Innocent owner burden	C	Depends on the property. Generally, the government bears the burden of proof. But for drug-related forfeitures of property valued over \$50,000, the owner bears the burden. Mich. Comp. Laws §§ 333.7523a(2)(b) (burden on government in drug-related forfeitures), 600.4707(6)(b) (burden on government in other forfeitures); <i>see id.</i> §§ 333.7521a(6), .7523a(1) (procedures do not apply in drug-related forfeitures of property valued over \$50,000); <i>see also id.</i> §§ 333.7521(1)(d)(ii), (f), 333.7531(1) (burden on owner in drug-related forfeitures under pre-reform procedure).
Financial incentive	F	100% in drug-related forfeitures; 75% in other forfeitures. Mich. Comp. Laws §§ 333.7524(1)(b)(ii), 600.4708(1)(f).
Overall grade	D-	
<b>Minnesota</b>		
Standard of proof	C+	Weak conviction provision does not require conviction of an owner, but only of “a person”—and only for forfeitures of property worth less than \$50,000 and only when the owner files a claim. The provision does not apply if the government obtains “[a] person’s agreement to provide information” in exchange for a dropped charge. After the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence. Minn. Stat. Ann. § 609.531, subd. 2–3, 6a(b), 6a(b)(2), 6a(d).
Innocent owner burden	F	Owner. Minn. Stat. § 609.5311, subd. 3(d); <i>Jacobson v. \$55,900 in U.S. Currency</i> , 728 N.W.2d 510, 519–20 & n.6 (Minn. 2007); <i>Blanche v. 1995 Pontiac Grand Prix</i> , 599 N.W.2d 161, 167 (Minn. 1999); <i>see also</i> Minn. Stat. §§ 609.5314, subd. 1(c), 169A.63, subds. 7(d), 9(e).
Financial incentive	D	90% in general; 60% in cases involving prostitution or human trafficking; 100% in DWI cases. Minn. Stat. §§ 609.5315, subds. 5, 5(a–c), 169A.63, subd. 10(b).
Overall grade	D	

Mississippi		
Standard of proof	D	Preponderance of the evidence. Miss. Code Ann. § 41-29-179(2).
Innocent owner burden	A	Government. Miss. Code Ann. § 41-29-179(2); <i>Galloway v. Cnty. of New Albany</i> , 735 So. 2d 407, 411–12 (Miss. 1999); <i>Curtis v. State</i> , 642 So. 2d 381, 384–86 (Miss. 1994); 1994 <i>Mercury Cougar v. Tishomingo Cnty.</i> , 970 So. 2d 744, 747–49 (Miss. Ct. App. 2007). <i>But cf.</i> Miss. Code Ann. § 41-29-153(a)(4)(B), (a)(7)(A) (placing burden on owner, but statute has been interpreted in above cases to place burden on government).
Financial incentive	C	80% if one law enforcement agency participated in the forfeiture; 100% otherwise. Miss. Code Ann. § 41-29-181(2).
Overall grade	C-	
Missouri		
Standard of proof	B	Strong conviction provision requires an owner’s conviction, even when forfeiture is uncontested. Once there is a conviction, property must be linked to the crime by a preponderance of the evidence. Mo. Ann. Stat. § 513.617(1) (forfeiture is “a civil procedure,” and civil cases in Missouri are subject to the preponderance standard); 513.645(6); <i>Cnty. of Springfield v. Gee</i> , 149 S.W.3d 609, 615–16 (Mo. Ct. App. 2004). <i>See Rodriguez v. Suzuki Motor Corp.</i> , 936 S.W.2d 104, 110 (Mo. 1996).
Innocent owner burden	F	Owner. Mo. Rev. Stat. § 513.615; <i>State v. Beaird</i> , 914 S.W.2d 374, 378 (Mo. Ct. App. 1996); <i>State v. 1973 Fleetwood Mobile Home</i> , 802 S.W.2d 582, 584 & n.3 (Mo. Ct. App. 1991).
Financial incentive	A	No financial incentive. All forfeiture proceeds go to fund schools. Mo. Const. art. IX, § 7; Mo. Rev. Stat. § 513.623.
Overall grade	B+	
Montana		
Standard of proof	B	Strong conviction provision requires an owner’s conviction in a criminal proceeding “held in conjunction with” forfeiture. Once there is a conviction, property must be linked to the crime by clear and convincing evidence. Mont. Code Ann. §§ 44-12-207(c), -210(1).
Innocent owner burden	A	Government. The government must disprove an innocent owner claim by clear and convincing evidence. Mont. Code Ann. § 44-12-211; <i>see also id.</i> § 45-9-206(8).
Financial incentive	F	Up to 100%. However, when forfeiture money goes to the state, annual proceeds above \$125,000 must be divided equally between the general fund and a state forfeiture fund. Mont. Code Ann. § 44-12-213.
Overall grade	D-	

Nebraska		
Standard of proof	A	Criminal forfeiture. Neb. Rev. Stat. §§ 28-416(18), -431(6), -813.01(5), -1111, -1463.06; -1601; <i>State v. Franco</i> , 594 N.W.2d 633, 639–40 (Neb. 1999)
Innocent owner burden	F	Owner. Neb. Rev. Stat. §§ 28-431(5)–(6), -1601(3).
Financial incentive	C	50%. Neb. Const. art. VII, § 5(2); Neb. Rev. Stat. § 28-1439.02.
Overall grade	C	
Nevada		
Standard of proof	C	Clear and convincing evidence. Nev. Rev. Stat. § 179.1173(4).
Innocent owner burden	F	Owner. Nev. Rev. Stat. § 179.1164(2).
Financial incentive	F	Up to 100%. However, if the government’s forfeiture account contains more than \$100,000 at the end of a given fiscal year, 70% of the excess must be given to the school district in the judicial district where the property was seized. Nev. Rev. Stat. § 179.1187.
Overall grade	D-	
New Hampshire		
Standard of proof	C+	Weak conviction provision that purports to require an owner’s conviction but also makes it the owner’s burden to prove innocence. The provision was enacted in 2016 and has not been definitively interpreted by the New Hampshire courts. It is unclear whether the standard of proof to link property to the crime, after the conviction provision is satisfied, is preponderance of the evidence or clear and convincing evidence. N.H. Rev. Stat. Ann. §§ 318-B:17-b(IV)(b), (d), 617:1-a(I). <i>Compare id.</i> § 318-B:17-b(IV)(b) (preponderance for drug forfeitures) <i>with id.</i> § 617:1-a(III) (clear and convincing for all forfeitures).
Innocent owner burden	F	Owner. N.H. Rev. Stat. Ann. §§ 617:4-a, 318-B:17-b(IV)(b).
Financial incentive	D	90% (45% to local law enforcement, 45% to the state drug forfeiture fund), with caps. Local law enforcement can keep no more than \$225,000 from a single forfeiture, and amounts in the state drug forfeiture fund above \$1,000,000 must be turned over to the state general fund. N.H. Rev. Stat. Ann. § 318-B:17-b(V).
Overall grade	D	



New Jersey		
Standard of proof	C+	Weak conviction provision precludes forfeiture when criminal charges “related to the property seizure” are never filed against a person (not necessarily an owner) or prosecutors fail to establish “criminal culpability” of any person. The provision applies only to contested forfeitures of low-value property (\$1,000 or less for cash and \$10,000 or less for other property). After the conviction provision is satisfied, property must be linked to the crime by a preponderance of the evidence.  N.J. Stat. Ann. §§ 2C:64-3(e), -3(k)(1)–(2); <i>State v. Seven Thousand Dollars</i> , 642 A.2d 967, 975 (N.J. 1994); <i>State v. \$2,293 in U.S. Currency</i> , 95 A.3d 260, 266 (N.J. Super. Ct. App. Div. 2014).
Innocent owner burden	F	Owner.  N.J. Stat. Ann. § 2C:64-5(b); <i>State v. Seven Thousand Dollars</i> , 642 A.2d 967, 974 (N.J. 1994).
Financial incentive	F	100% when forfeiture is pursued by local law enforcement; 95% when forfeiture is pursued by the attorney general.  N.J. Stat. Ann. § 2C:64-6(a), (c).
Overall grade	D-	
New Mexico		
Standard of proof	A	Criminal forfeiture.  N.M. Stat. Ann. § 31-27-4.
Innocent owner burden	A	Government. When a person claims to be an innocent owner and shows an ownership interest, the government must prove by clear and convincing evidence that the person had actual knowledge of the underlying crime giving rise to the forfeiture.  N.M. Stat. Ann. § 31-27-7.1(D).
Financial incentive	A	No financial incentive. All proceeds must be deposited in the general fund, though agencies can retain part of the proceeds from criminal forfeiture to cover related expenses.  N.M. Stat. Ann. § 31-27-7(B).
Overall grade	A	
New York		
Standard of proof	C	In drug cases, prosecutors must provide clear and convincing evidence that a crime occurred and then link the property to that crime by a preponderance of the evidence. Very weak conviction provision applies in non-drug cases.  N.Y. C.P.L.R. §§ 1310(5)–(6), (9)–(10), 1311(3)(a)–(b); <i>Hendley v. Clark</i> , 543 N.Y.S.2d 554, 556 (N.Y. App. Div. 1989).
Innocent owner burden	A	Government.  N.Y. C.P.L.R. § 1311(3).
Financial incentive	C	60%.  N.Y. C.P.L.R. § 1349(2)(g)–(h).
Overall grade	C	

North Carolina		
Standard of proof	A	In general, forfeiture requires a criminal conviction. However, civil forfeiture is available in racketeering cases, which are governed by a preponderance of the evidence standard.  N.C. Gen. Stat. §§ 75D-5, 90-112; <i>State ex. rel. Thornburg v. \$52,029</i> , 378 S.E.2d 1, 3–5 (N.C. 1989); <i>State v. Johnson</i> , 478 S.E.2d 16, 25 (N.C. Ct. App. 1996).
Innocent owner burden	F	Owner. In racketeering cases, the only context in which civil forfeiture is available, the owner bears the burden of proof.  N.C. Gen. Stat. § 75D-5(i); <i>State ex. rel. Thornburg v. 1907 N. Main St.</i> , 384 S.E.2d 585, 586–87 (N.C. Ct. App. 1989).
Financial incentive	A	No financial incentive. All forfeiture proceeds go to public schools.  N.C. Const. art. IX, § 7; <i>State ex. rel. Thornburg v. 532 B St.</i> , 432 S.E.2d 684, 686–87 (N.C. 1993).
Overall grade	B+	

North Dakota		
Standard of proof	C+	Weak conviction provision requires an owner’s conviction but does not apply if forfeiture is uncontested or if the owner enters an agreement with the prosecution for immunity or a reduced sentence in exchange for assisting law enforcement. After the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence. No conviction is necessary if it can be shown beyond a reasonable doubt that the property was used in a crime or constitutes proceeds of criminal activity.  N.D. Cent. Code Ann. §§ 19-03.1-36.2(1–2), -36.5.
Innocent owner burden	F	Owner.  N.D. Cent. Code §§ 19-03.1-36(1)(e), -36.6(1), -36.7(1), -37(1).
Financial incentive	F	Up to 100%. However, if the government’s forfeiture fund exceeds \$200,000 (exclusive of legislative appropriations and multijurisdictional drug task forces) over any two-year budget period, the excess must be deposited in the general fund.  N.D. Cent. Code §§ 54-12-14, 19-03.1-36(5).
Overall grade	D-	

Ohio		
Standard of proof	C	Clear and convincing evidence. Charging provision requires charges to be filed, and stays civil forfeiture while criminal charges are pending, but does not require conviction. The charging provision does not apply to forfeitures of cash over \$15,000 or in cases where an owner dies, is unavailable or fails to contest forfeiture.  Ohio Rev. Code Ann. § 2981.05(A), (C–D), (H).
Innocent owner burden	C	Depends on the property. Generally, the owner bears the burden of proof. But for legally titled or registered property and in cases involving property valued over \$15,000 (adjusted annually for inflation), the government bears the burden.  Ohio Rev. Code Ann. §§ 2981.03(A)(4–5), -.05(D)(3), (D)(7); <i>see also id.</i> § 2981.04(E)–(F) (placing burden on third-party claimants).
Financial incentive	F	Up to 100% in general; up to 90% in juvenile cases.  Ohio Rev. Code Ann. § 2981.13(B)(4).
Overall grade	D-	

Oklahoma		
Standard of proof	D	Preponderance of the evidence. Okla. Stat. tit. 63, § 2-503(B)–(C).
Innocent owner burden	F	Owner. Okla. Stat. tit. 63, § 2-503(A)(4)(b), (A)(7); <i>State ex rel. Campbell v. Eighteen Thousand Two Hundred Thirty-Five Dollars</i> , 184 P.3d 1078, 1081 (Okla. 2008).
Financial incentive	F	Up to 100%. Okla. Stat. tit. 63, §§ 2-503(F)(2), -506(L), -508.
Overall grade	D-	
Oregon		
Standard of proof	C+	Weak conviction provision does not require conviction of an owner, but only of “a person.” The provision applies only when forfeiture is contested. After the conviction provision is satisfied, personal property must be linked to the crime by a preponderance of the evidence, and real property by clear and convincing evidence. Or. Rev. Stat. Ann. §§ 131A.255(1)–(3), -315.
Innocent owner burden	A	Government. The government bears the burden of proof except in cases where cash, weapons or negotiable instruments were found in close proximity to drugs, in which cases the owner bears the burden of showing by a preponderance of the evidence that the items are not the proceeds or instrumentalities of a drug crime. Or. Rev. Stat. § 131A.255(2), (5).
Financial incentive	C	52.5% when forfeiture is pursued by local law enforcement; 47% when forfeiture is pursued by the state. Or. Rev. Stat. §§ 131A.360(1), (4), (6), -365(1), (3), (5).
Overall grade	C	
Pennsylvania		
Standard of proof	C	Clear and convincing evidence. 42 Pa. Cons. Stat. § 5805(j)(3); <i>Commonwealth v. Teeter</i> , No. 59 C.D. 2016, 2017 WL 4945275, at *6 n.14 (Pa. Commw. Ct. Oct. 31, 2017); <i>see also Commonwealth v. 1992 Volkswagen Passat</i> , No. 40 C.D. 2016, 2018 WL 341660, at *9 n.8 (Pa. Commw. Ct. Jan. 10, 2018) (Leavitt, J., dissenting).
Innocent owner burden	A	Government. 42 Pa. Cons. Stat. § 5805(j)(4).
Financial incentive	F	100%. 42 Pa. Cons. Stat. § 5803(f)–(i).
Overall grade	D-	

<b>Rhode Island</b>		
Standard of proof	D	The government must show probable cause for the seizure, and the owner must show that the property is not forfeitable by a preponderance of the evidence. 21 R.I. Gen. Laws § 28-5.04.2(p).
Innocent owner burden	F	Owner. 21 R.I. Gen. Laws § 28-5.04.2(p).
Financial incentive	D	90%. 21 R.I. Gen. Laws § 28-5.04(b)(3).
Overall grade	D-	
<b>South Carolina</b>		
Standard of proof	D	The government must show probable cause for the seizure, and the owner must show that the property is not forfeitable by a preponderance of the evidence. S.C. Code Ann. §§ 44-53-520(b), -586(b); <i>Pope v. Gordon</i> , 633 S.E.2d 148, 151 (S.C. 2006).
Innocent owner burden	F	Owner. S.C. Code Ann. §§ 44-53-540, -586(b); <i>Pope v. Gordon</i> , 633 S.E.2d 148, 151 (S.C. 2006).
Financial incentive	D	95% (75% to law enforcement, 20% to prosecutors). S.C. Code Ann. § 44-53-530(e).
Overall grade	D-	
<b>South Dakota</b>		
Standard of proof	D	Preponderance of the evidence. S.D. Codified Laws § 23A-49-13.
Innocent owner burden	F	Owner. S.D. Codified Laws §§ 23A-49-4, -19.
Financial incentive	F	100%. Forfeiture proceeds go to the attorney general's "drug control fund" and are then distributed to law enforcement for drug enforcement efforts. S.D. Codified Laws §§ 34-20B-64, 23A-49-20(2)(a).
Overall grade	D-	
<b>Tennessee</b>		
Standard of proof	D	Preponderance of the evidence. Tenn. Code Ann. §§ 40-33-107(4), -210(a); <i>State v. Sprunger</i> , 458 S.W.3d 482, 500 (Tenn. 2015).
Innocent owner burden	C	Depends on the property. Generally, the government bears the burden of proof. But for vehicles, owners must prove that they had no knowledge of the criminal use before a claim will be allowed. Tenn. Code Ann. §§ 40-33-108(a), -210(a)(2), (c)–(f).
Financial incentive	F	Up to 100%. Tenn. Code Ann. §§ 40-33-110, -211(a)–(b).
Overall grade	D-	

<b>Texas</b>		
Standard of proof	D	Preponderance of the evidence. Tex. Code Crim. Proc. Ann. art. 59.05(b).
Innocent owner burden	F	Owner. Tex. Code Crim. Proc. Ann. art. 59.02(c), (h)(1).
Financial incentive	C	Up to 70% in cases where a default judgment is entered; up to 100% in contested cases. Tex. Code Crim. Proc. Ann. art. 59.06(c), (c-3); <i>see also</i> Tex. Att’y Gen. Op. GA-0122 (Nov. 18, 2003) (noting 70–30 split between district attorney and Department of Public Safety).
Overall grade	D+	
<b>Utah</b>		
Standard of proof	C	Clear and convincing evidence. Utah Code Ann. § 24-4-104(6).
Innocent owner burden	A	Government. Utah Code Ann. § 24-4-107(2).
Financial incentive	F	100%. Utah Code Ann. §§ 24-4-115, -117.
Overall grade	D-	
<b>Vermont</b>		
Standard of proof	C+	Weak conviction provision does not require conviction of an owner, but only of “a person.” The provision does not apply if the person agrees with prosecutors to avoid criminal charges in exchange for forfeiture of the property. After the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence. Vt. Stat. Ann. tit. 18, §§ 4243(a), (c), 4244(e).
Innocent owner burden	F	Owner. Vt. Stat. Ann. tit. 18, § 4244(d).
Financial incentive	C	45%. Vt. Stat. Ann. tit. 18, § 4247(b)(1).
Overall grade	C-	
<b>Virginia</b>		
Standard of proof	C+	Weak conviction provision does not require conviction of an owner and does not apply if the owner fails to contest forfeiture. After the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence. Va. Code Ann. §§ 19.2-386.1(C), .10(A).
Innocent owner burden	F	Owner. Va. Code Ann. §§ 19.2-386.8(3), .10(A).
Financial incentive	F	100% (90% to participating agencies, 10% to the Department of Criminal Justice Services). Va. Code Ann. § 19.2-386.14(A1)–(B).
Overall grade	D-	

<b>Washington</b>		
Standard of proof	D	Preponderance of the evidence. Wash Rev. Code § 69.50.505(5).
Innocent owner burden	F	Owner. Wash. Rev. Code §§ 69.50.505(1)(d)(ii), (g), (h), (i), 69.50.506(a).
Financial incentive	D	90%. Wash. Rev. Code § 69.50.505(9).
Overall grade	D-	
<b>West Virginia</b>		
Standard of proof	D	Preponderance of the evidence. W. Va. Code § 60A-7-705(e).
Innocent owner burden	F	Owner. W. Va. Code § 60A-7-703(a)(5)(ii), (7), (8).
Financial incentive	F	100%. W. Va. Code § 60A-7-706.
Overall grade	D-	
<b>Wisconsin</b>		
Standard of proof	C+	Weak conviction provision does not require conviction of an owner, but only of “a person,” and a court can waive the provision if the owner fails to contest forfeiture or in other situations, including when a defendant enters into an immunity agreement with prosecutors in exchange for assisting law enforcement. After the conviction provision is satisfied, property must be linked to the crime by clear and convincing evidence.  Wis. Stat. Ann. §§ 961.55(1g), .555(2)(am),(3).
Innocent owner burden	A	Government. Wis. Stat. § 961.555(5)(c), (e)–(f); <i>cf. id.</i> §§ 961.555(5)(b), (d), .56(1) (burden on owner with respect to establishing ownership).
Financial incentive	A	No financial incentive. All forfeiture proceeds go to fund schools. However, agencies can retain up to 50% of proceeds to pay for forfeiture expenses, for which they must provide an itemized report.  Wis. Const. art. X, § 2; Wis. Stat. § 961.55(5)(b), (e) (permitting seizing agencies to retain reasonable expenses).
Overall grade	A-	
<b>Wyoming</b>		
Standard of proof	C	Clear and convincing evidence. Wyo. Stat. Ann § 35-7-1049(k).
Innocent owner burden	F	Owner. Wyo. Stat. Ann. §§ 35-7-1049(m), -1050.
Financial incentive	F	Up to 100%. Wyo. Stat. Ann. § 35-7-1049(r)(i)–(vi).
Overall grade	D-	

Federal Government		
Standard of proof	D	Preponderance of the evidence. 18 U.S.C. § 983(c).
Innocent owner burden	F	Owner. 18 U.S.C. § 983(d).
Financial incentive	F	100%. 18 U.S.C. § 981(e); <i>see also United States v. Pescatore</i> , 637 F.3d 128, 137 (2d Cir. 2011).
Overall grade	D-	

## Appendix C: New Mexico Crime Analysis Methods

### Sample and Data

The study used two analytical models—difference-in-differences and interrupted time series—to compare crime rates in New Mexico to those in neighboring Colorado and Texas to determine whether New Mexico’s forfeiture reform had an effect on crime. Arizona enacted forfeiture reforms during the study period, so we could not use it as a control state.

The unit of analysis was the county. Law enforcement agency-level data for each county were summed to create county totals. Agencies included in the analyses were sheriffs, police and others assigned a county FIPS code.

To have data from enough time periods to run these models, we collected data at the monthly level between 2010 and 2017. Colorado enacted forfeiture reforms in July 2017, so we were unable to use it as a control after that date. However, some analyses used only Texas, which enacted no forfeiture reforms during the period, as a control. Those analyses go through December 2017. To generate a balanced panel, we dropped data for 2010 to 2012 from the analysis due to inconsistent agency reporting. This gave us 53 months in the pre-period and 24–30 months in the post-period.

The literature suggests a one- to two-year delay may be necessary before a policy change’s effect on crime rates, if any, becomes detectable. For this reason, we examined two and a half years of post-reform monthly crime rate data.<sup>262</sup>

Data sources are indicated in the table below.

**Table C.1: Data Sources**

Variable	Measure	Source
Crime rates	Overall monthly offenses per capita	Federal Bureau of Investigation Uniform Crime Reporting Program <sup>263</sup>
	Monthly arrests per capita, by type of offense: <ul style="list-style-type: none"> <li>• All arrests</li> <li>• DUI</li> <li>• Drug possession</li> <li>• Drug sales</li> </ul>	
Population	Annual county populations, linear interpolation used to generate monthly figures	U.S. Census Bureau
Unemployment	Annual county unemployment, linear interpolation used to generate monthly figures	Bureau of Labor Statistics
Police	Annual county number of sworn law enforcement officers, linear interpolation used to generate monthly figures	FBI UCR Program; some 2017 figures collected directly from counties

The offense data provided by the FBI include some imputed figures due to agency non-reporting, which may impact the data’s reliability.<sup>264</sup> As reporting compliance has improved in recent years, the need for imputation has decreased and become less common.<sup>265</sup> In fact, the data used here are very recent and have only small amounts of imputation, thus significantly increasing reliability.



The arrest data were not imputed by the FBI at the agency level, so we performed two different methods of imputation to balance the panel and account for agencies with inconsistent reporting. In the first method, we dropped agencies with fewer than 48 months of data. For remaining agencies with missing data, we interpolated the months with missing crime data using a linear interpolation method drawing on the nearest months with non-missing crime data for each agency. In the second method, we ran all models using arrest data on which we conducted multiple imputation but did not drop agencies with poor reporting. The two imputation methods produced consistent results.

We also interpolated monthly estimates of law enforcement officers and population. Those data are available only at the annual level, so we used a linear interpolation method to estimate the monthly numbers.

**Table C.2: Descriptive Statistics**

	Crimes Per 1,000 Population					Covariates		
	Offenses	All Arrests	DUI Arrests	Drug Possession Arrests	Drug Sales Arrests	Police Officers	Population	Unemployment
NM Pre-Mean	2.72	3.61	0.23	0.17	0.04	178	83,979	7.7%
NM Post-Mean	3.15	3.77	0.24	0.24	0.04	187	84,023	7.3%
NM Pre-St. Dev.	1.58	2.49	0.23	0.19	0.09	275	133,229	3.0%
NM Post-St. Dev.	12.27	2.61	0.27	0.26	0.07	288	133,904	2.2%
CO Pre-Mean	1.77	3.24	0.37	0.12	0.02	255	108,717	5.8%
CO Post-Mean	1.90	3.52	0.34	0.16	0.02	252	112,631	3.3%
CO Pre-St. Dev.	1.29	1.98	0.30	0.13	0.09	495	188,005	2.2%
CO Post-St. Dev.	1.36	2.30	0.30	0.20	0.05	506	195,546	1.1%
TX Pre-Mean	2.38	3.97	0.22	0.46	0.05	258	126,478	5.5%
TX Post-Mean	2.12	3.95	0.20	0.47	0.08	274	131,137	5.0%
TX Pre-St. Dev.	1.75	3.11	0.23	0.84	0.23	946	422,110	2.0%
TX Post-St. Dev.	1.52	3.34	0.22	0.56	0.76	993	438,730	1.8%

Note: Differences between the covariates in the offense and arrest models were trivial. We present estimates as they appear in the arrest models.

## Analysis

We ran models on five different dependent variables, all measured monthly and transformed into natural logs: overall offenses, overall arrests, DUI arrests, drug possession arrests and drug sales arrests. Offenses are the number of crimes that come to the attention of law enforcement, while arrests represent the number of offenses that are cleared by arrest. All models used robust, clustered standard errors. Variables included:

- $Y$  = natural log of per capita crime rates
- $NM = 1$  if a county is in New Mexico, 0 otherwise
- $Timecount$  = linear count of months in the study period
- $Timecount^2$  =  $Timecount$  squared
- $Post = 1$  if the month was in July 2015 or later, 0 otherwise
- $Months\_post\_change = 0$  if the time is pre-July 2015, a linear time count of months after
- $NM * Timecount$  = Interaction of  $NM$  and  $Timecount$
- $NM * Timecount^2$  = Interaction of  $NM$  and  $Timecount^2$
- $Post * NM$  = Interaction of  $Post$  and  $NM$
- $Months\_post\_change * NM$  = Interaction of  $Months\_post\_change$  and  $NM$
- $\Theta$  = A vector of time-varying covariates: monthly population, monthly unemployment, monthly number of sworn law enforcement officers
- $\Omega$  = Month fixed effects
- $\Phi$  = County fixed effects

### Analysis 1: Difference-in-Differences

- a. Comparing New Mexico to Colorado and Texas as controls, using data through June 2017.

$$\text{Model 1: } Y = \beta_0 + \beta_1 \text{Post} + \beta_2 \text{NM} + \beta_3 \text{post*NM} + \theta + e$$

$$\text{Model 2: } Y = \beta_0 + \beta_1 \text{Post*NM} + \Omega + \Phi + \theta + e$$

- b. Comparing New Mexico to Texas as a control, using all available data (through December 2017), running models 1 and 2.
- c. Running a. and b., limiting the sample to border counties only.

### Analysis 2: Interrupted Time Series

- d. Comparing New Mexico to Colorado and Texas as controls, using data through June 2017.

$$\text{Model 3: } Y = \beta_0 + \beta_1 \text{Post} + \beta_2 \text{NM} + \beta_3 \text{Post*NM} + \beta_4 \text{Timecount} + \beta_5 \text{Months\_post\_change} + \beta_6 \text{Months\_post\_change*NM} + \theta + e$$

$$\text{Model 4: } Y = \beta_0 + \beta_1 \text{Post} + \beta_2 \text{Months\_post\_change} + \beta_3 \text{Post*NM} + \beta_4 \text{NM*Months} + \beta_5 \text{Months\_post\_change*NM} + \beta_6 \text{Timecount} + \Omega + \Phi + \theta + e$$

$$\text{Model 5: } Y = \beta_0 + \beta_1 \text{Timecount} + \beta_2 \text{Timecount}^2 + \beta_3 \text{NM*Timecount} + \beta_4 \text{NM*Timecount}^2 + \Omega + \Phi + \theta + e$$

- e. Comparing New Mexico to Texas as a control, using all available data (through December 2017), running models 3, 4 and 5.
- f. Running d. and e., limiting the sample to border counties only.

## Results

The tables below present regression results from Model 5, which estimates the relationship between forfeiture laws and crime rates as quadratic. We present the quadratic results because they appeared to best fit trends in the data. Results from all models are available upon request.

As explained above, the variable Months is a simple chronological count of the months in the sample period, and Months<sup>2</sup> is the square of that variable. NM\*Months multiplies the month count with a variable that = 1 if a county is in New Mexico and 0 otherwise, and NM\*Months<sup>2</sup> multiplies NM and Months<sup>2</sup>. NM\*Months<sup>2</sup> enables us to detect if there is a deflection in crime rates and in what year and month it occurred. This isolates the reform's effect, if any, on crime rates in New Mexico.

Table C.3: New Mexico, Colorado and Texas, Jan. 1, 2013, to June 30, 2017

		Offenses	Arrests			
			All	DUI	Possession	Sales
Timecount	$\beta$	-0.002	-0.006	0.011	0.014	0.018
	S.E.	0.001	0.002	0.004	0.004	0.004
	P	0.086	0.009	0.009	0.002	0.000
Timecount <sup>2</sup>	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.544	0.058	0.000	0.000	0.000
NM*Timecount	$\beta$	0.003	0.005	-0.012	0.003	0.001
	S.E.	0.004	0.008	0.016	0.021	0.016
	P	0.410	0.552	0.457	0.892	0.956
NM*Timecount <sup>2</sup>	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.896	0.255	0.749	0.381	0.293
Population	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.099	0.013	0.001	0.001	0.001
Police	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.121	0.864	0.759	0.516	0.178
Unemployment	$\beta$	-0.011	-0.009	0.056	0.064	0.051
	S.E.	0.006	0.009	0.020	0.021	0.020
	P	0.050	0.325	0.006	0.002	0.009

Table C.4: New Mexico and Texas, Jan. 1, 2013, to Dec. 30, 2017

		Offenses	Arrests			
			All	DUI	Possession	Sales
Timecount	$\beta$	0.001	0.000	0.017	0.020	0.025
	S.E.	0.004	0.002	0.004	0.004	0.004
	P	0.764	0.850	0.000	0.000	0.000
Timecount <sup>2</sup>	$\beta$	0.000	0.000	0.000	0.000	-0.001
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.009	0.491	0.000	0.000	0.000
NM*Timecount	$\beta$	0.001	0.005	-0.021	-0.007	-0.016
	S.E.	0.004	0.009	0.017	0.022	0.017
	P	0.764	0.590	0.221	0.755	0.331
NM*Timecount <sup>2</sup>	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.575	0.256	0.680	0.832	0.674
Population	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.054	0.012	0.000	0.000	0.000
Police	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.339	0.213	0.986	0.416	0.627
Unemployment	$\beta$	0.008	0.009	0.066	0.071	0.050
	S.E.	0.006	0.012	0.024	0.023	0.024
	P	0.191	0.442	0.007	0.002	0.035

Table C.5: Sample limited to border counties in New Mexico, Colorado and Texas, Jan. 1, 2013, to June 30, 2017

		Offenses	Arrests			
			All	DUI	Possession	Sales
Timecount	$\beta$	0.004	0.006	0.000	0.002	-0.017
	S.E.	0.004	0.010	0.013	0.017	0.013
	P	0.306	0.554	0.973	0.891	0.191
Timecount <sup>2</sup>	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.120	0.563	0.601	0.853	0.252
NM*Timecount	$\beta$	-0.002	-0.003	0.005	0.013	0.043
	S.E.	0.005	0.016	0.028	0.036	0.027
	P	0.686	0.858	0.851	0.717	0.122
NM*Timecount <sup>2</sup>	$\beta$	0.000	0.000	0.000	-0.001	-0.001
	S.E.	0.000	0.000	0.000	0.001	0.000
	P	0.653	0.875	0.321	0.321	0.044
Population	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.129	0.001	0.000	0.000	0.001
Police	$\beta$	0.000	-0.003	0.000	0.001	0.000
	S.E.	0.001	0.003	0.004	0.006	0.005
	P	0.966	0.253	0.955	0.815	0.965
Unemployment	$\beta$	-0.004	0.054	0.038	0.054	-0.007
	S.E.	0.027	0.027	0.063	0.073	0.043
	P	0.881	0.051	0.554	0.466	0.870

Table C.6: Sample limited to border counties in New Mexico and Texas, Jan. 1, 2013, to Dec. 30, 2017

		Offenses	Arrests			
			All	DUI	Possession	Sales
Timecount	$\beta$	0.006	-0.008	0.000	-0.006	-0.005
	S.E.	0.005	0.012	0.008	0.016	0.010
	P	0.260	0.508	0.980	0.724	0.600
Timecount <sup>2</sup>	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.098	0.424	0.488	0.744	0.791
NM*Timecount	$\beta$	-0.003	0.019	0.007	0.028	0.028
	S.E.	0.006	0.018	0.025	0.036	0.025
	P	0.565	0.323	0.788	0.448	0.279
NM*Timecount <sup>2</sup>	$\beta$	0.000	0.000	-0.001	-0.001	-0.001
	S.E.	0.000	0.000	0.000	0.001	0.000
	P	0.424	0.194	0.180	0.147	0.095
Population	$\beta$	0.000	0.000	0.000	0.000	0.000
	S.E.	0.000	0.000	0.000	0.000	0.000
	P	0.006	0.000	0.000	0.000	0.000
Police	$\beta$	0.000	0.001	-0.004	-0.004	-0.003
	S.E.	0.001	0.002	0.003	0.004	0.003
	P	0.735	0.727	0.239	0.405	0.302
Unemployment	$\beta$	0.025	0.066	0.102	0.152	0.021
	S.E.	0.013	0.030	0.065	0.087	0.057
	P	0.060	0.036	0.126	0.093	0.711

## Endnotes

1. First Amended Complaint at ¶¶ 105–148, *Ingram, et al. v. Cnty. of Wayne*, No. 2:20-cv-10288-AJT-EAS (E.D. Mich. May 11, 2020), ECF No. 12, <https://ij.org/wp-content/uploads/2020/02/Amended-Complaint.pdf>
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3. Claim for Property and Verified Answer, *State of Oklahoma v. \$53,234 Cash*, No. CV-2016-66 (15th Jud. District of Oklahoma, Muskogee Co., Apr. 22, 2016), <https://ij.org/wp-content/uploads/2016/04/verified-answer.pdf>; Ingraham, C. (2016, Apr. 25). How police took \$53,000 from a Christian band, an orphanage and a church. *The Washington Post*. <https://www.washingtonpost.com/news/wonk/wp/2016/04/25/how-oklahoma-cops-took-53000-from-a-burmese-christian-band-a-church-in-omaha-and-an-orphanage-in-thailand/>
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5. First Amended Complaint, *Ingram, et al. v. Cnty. of Wayne*, *supra* note 1, at ¶ 114.
6. Arnold, T. (2019, Mar. 28). Wayne County doubling down on forfeiture as legislature moves to reform it. *Michigan Capitol Confidential*. <https://www.michigancapitolconfidential.com/wayne-county-doubling-down-on-forfeiture-as-legislature-moves-to-reform-it>
7. *Leonard v. Texas*, cert. denied, 137 S. Ct. 837, 197 L. Ed 2d 474 (2017) (Thomas, J., concurring), [https://www.supremecourt.gov/opinions/16pdf/16-122\\_1b7d.pdf](https://www.supremecourt.gov/opinions/16pdf/16-122_1b7d.pdf)
8. Initial Brief of Respondents, *Richardson v. \$20,771.00 U.S. Currency*, Appellate Case No. 2020-000092 (S.C. July 15, 2020) (on appeal from Horry Co. Ct. of Com. Pleas, Case No. 2017-CP-26-07411), <https://ij.org/wp-content/uploads/2020/07/Initial-Brief-of-Respondents-FINAL-TO-FILE-07.15.20-IJ115663xA6322.pdf>; Notice of Pending Forfeiture, *In re U.S. Currency \$31,780; 2012 Volkswagen Jetta, VIN 3VW3L7AJ0CM366141*, Civ. No. CV-2016-00217 (Ariz. Super. Ct., Navajo Cnty., May 23, 2016).
9. See, e.g., *Leonard v. Texas*, cert. denied, 137 S. Ct. 837, 197 L. Ed 2d 474 (2017) (Thomas, J., concurring), [https://www.supremecourt.gov/opinions/16pdf/16-122\\_1b7d.pdf](https://www.supremecourt.gov/opinions/16pdf/16-122_1b7d.pdf) and Ellis, M. (2019, Feb. 10). From pirates to kingpins, the strange legal history of civil forfeiture. *The Greenville News*. <https://www.greenvilleonline.com/in-depth/news/taken/2019/02/10/civil-forfeiture-history-pirate-privateers-organized-crime-drug-kingpins/2458836002/>
10. Authors' tabulation of unique values within the "Statute Violation Code" variable in the U.S. Department of Justice's Consolidated Assets Tracking System, updated April 3, 2020, <https://www.justice.gov/afp/freedom-information-act>. See also U.S. Department of Justice Criminal Division Money Laundering and Asset Recovery Section. (2019a). *Asset forfeiture and money laundering statutes 2019*. <https://www.justice.gov/criminal-mlars/file/1146911/download>. Most federal offenses giving rise to seizure sound serious, but agencies can interpret them broadly. For example, U.S. Customs and Border Protection seized Gerardo Serrano's truck, claiming he used it to illegally transport materials of war, a violation of 22 U.S.C. § 401. CBP was referring to five bullets Gerardo forgot were in the truck's center console. No guns or other weapons were in the vehicle. Complaint, *Serrano v. U.S. CBP, et al.*, Civ. No. 2:17-cv-00048 (W.D. Tex. Sept. 6, 2017), ECF No. 1, <https://ij.org/wp-content/uploads/2017/09/As-Filed-Complaint-IJ090887xA6322.pdf>. See also "Forfeiture Creates Pressure to Wheel and Deal or Walk Away" on p. 38. Another federal offense giving rise to forfeiture is failing to file paperwork when entering or leaving the country with \$10,000 or more in cash or other currency. The law is intended to combat international money laundering, but innocent people can easily run afoul of it. Federal data reveal that when U.S. Customs and Border Protection and other Department of Homeland Security agencies seize currency for reporting violations at the nation's airports, other criminal activity, such as money laundering or drug trafficking, is rarely alleged. See, e.g., McDonald, J. (2020). *Jetway robbery? Homeland security and cash seizures*

- at airports. Arlington, VA: Institute for Justice. <https://ij.org/report/jetway-robbery/>. At the state level, the crimes giving rise to forfeiture can be quite diverse. For example, in Alabama, people who hunt illegally at night can lose their cars. Ala. Code § 9-11-252.1. In Alaska, planes can be forfeited if used to illegally transport alcohol to municipalities. Alaska Stat. § 04.16.220(a)(3)(C).
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  16. See, e.g., Cary, N., & Ellis, M. (2019, Jan. 27). 65% of cash seized by SC police comes from black men. Experts blame racism. *The Greenville News*. <https://www.greenvilleonline.com/story/news/taken/2019/01/27/south-carolina-racism-blamed-civil-forfeiture-black-men-taken-exclusive-investigation/2459039002/>
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25. Federal data are from the DOJ Assets Forfeiture Fund's annual financial statements available at <https://www.justice.gov/afp/reports-0> and the Treasury Forfeiture Fund's annual accountability reports available at <https://home.treasury.gov/policy-issues/terrorism-and-illicit-finance/asset-forfeiture/annual-reports>. For property-level federal analyses, we used the Consolidated Asset Tracking System (CATS) and then Seized Assets and Case Tracking System (SEACATS). DOJ maintains CATS, which tracks properties seized by agencies that participate in DOJ's forfeiture program and deposit proceeds into the Assets Forfeiture Fund. For more information, see <https://www.justice.gov/jmd/major-information-systems>. SEACATS, Treasury's main database for tracking forfeitures, is the system of record for the Treasury Forfeiture Fund and is maintained by U.S. Customs and Border Protection. SEACATS largely tracks property seized by agencies within the U.S. Department of Homeland Security. See <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-040-seacats-april2017.pdf>
26. For 2018, we have forfeiture data for every state except Alaska, Alabama, Arkansas, Kansas, North Carolina, North Dakota, Ohio and Vermont.
27. Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Minnesota, Missouri, Montana, New York, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia, Washington and Wyoming.
28. For some states without statewide records in the custody of a centralized reporting authority, we were able to compensate by obtaining data from individual state law enforcement agencies instead.
29. Agencies are no longer required to send reports to the state attorney general. H.B. No. 487, 2012 Leg., 129th Session (Ohio 2012), [http://archives.legislature.state.oh.us/BillText129/129\\_HB\\_487\\_EN\\_N.html](http://archives.legislature.state.oh.us/BillText129/129_HB_487_EN_N.html)
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32. For Mississippi, we included only the estimated value of properties known to be forfeited. Arkansas' final dispositions were inconsistent and unreliable, so we excluded its forfeitures altogether.
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- Office of Inspector General. (2018). *Treasury Forfeiture Fund accountability report fiscal year 2018*, p. 3; U.S. Department of the Treasury Office of Inspector General. (2019). *Treasury Forfeiture Fund accountability report fiscal year 2019*, p. 8.
36. U.S. Department of the Treasury Office of Inspector General, 2015, p. 12.
  37. U.S. Census Bureau, Population Division. (December 2018). Table 1. Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2018 (NST-EST2018-01) [Data table]. <https://www.census.gov/newsroom/press-kits/2018/pop-estimates-national-state.html>
  38. Arizona, Colorado, Connecticut, Florida, Georgia, Illinois, Maryland, Michigan, Nebraska, Minnesota, Nevada, Oregon, Pennsylvania, Utah and Wyoming. We also have property-level data for Idaho, Iowa, Mississippi and South Dakota, but we excluded them due to missing or incomplete data.
  39. Agencies often just list the sale amount or use their own judgment to estimate property's value.
  40. Vehicles may include some watercraft or aircraft as the relevant category in Florida is "conveyances."
  41. See data notes on Florida's State Profile for source details.
  42. Minn. Stat. § 609.5315 subd. 6 (original bill 2009 Minn. S.F. No. 2634).
  43. See data notes on Minnesota's State Profile for source details.
  44. U.S. Department of Justice Office of Public Affairs. (2017, July 19). Attorney General Sessions issues policy and guidelines on federal adoptions of assets seized by state or local law enforcement [Press release]. <https://www.justice.gov/opa/pr/attorney-general-sessions-issues-policy-and-guidelines-federal-adoptions-assets-seized-state>
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  46. U.S. Department of Justice. (n.d.). *Overview of the Asset Forfeiture Program*. <https://www.justice.gov/afp>
  47. U.S. Department of Justice Office of Public Affairs, 2017.
  48. U.S. Attorney's Office Eastern District of Tennessee. (2020). *Asset forfeiture*. <https://www.justice.gov/usao-edtn/criminal-division/asset-forfeiture>
  49. Ariz. Stat. Ann. § 13-4305; Ga Code Ann. § 16-13-49(b)(5); 725 Ill. Comp. Stat. Ann. § 150/7(1); Kan. Stat. Ann. § 60-4112(j)(4); Mich. Comp. Laws § 333.7521(1)(f); Minn. Stat. § 609.5314; Miss. Code Ann. § 41-29-153(a)(7); 42 Pa. Const. Stat. Ann. § 5802(6)(ii); R.I. Gen. Laws § 21-28-5.04; S.C. Code Ann. § 44-53-520(a)(8).
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  51. Tellingly, U.S. Immigration and Customs Enforcement agents are specifically instructed to "not waste investigative time and resources on liabilities." U.S. Immigration and Customs Enforcement. (2010). *Homeland Security Investigations asset forfeiture handbook* (HSI HB 10-04), p. 13. Among the factors agents are supposed to consider is whether there is "enough net equity to justify seizure." U.S. Immigration and Customs Enforcement, 2010, p. 34. See also Devereaux, R., & Woodman, S. (2017, Oct. 13). Leaked ICE guide offers unprecedented view of agency's asset forfeiture tactics. *The Intercept*. <https://theintercept.com/2017/10/13/ice-hsi-asset-forfeiture-handbook/>. DOJ's *Asset Forfeiture Policy Manual* sets thresholds that apply to all property seized for federal forfeiture, including by Treasury agencies. Those thresholds are the greater of \$30,000 or 20% of net equity for real property, \$5,000 for vehicles, \$15,000 for vessels, \$30,000 for aircraft, \$2,000 for personal property in the aggregate, and \$5,000 for cash. U.S. Department of Justice Criminal Division Money Laundering and Asset Recovery Section. (2019b). *Asset forfeiture policy manual 2019*. <https://www.justice.gov/criminal-afmls/file/839521/download>
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  61. See, e.g., *Kaley v. United States*, 571 U.S. 320 (2014); Pet. for Writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit, *Salgado v. United States*, No. 19-659, 2019 WL 6245392 (Nov. 19, 2019), <https://ij.org/wp-content/uploads/2019/11/Salgado-v.-United-States-of-America-Petition-for-a-Writ-of-Certiorari.pdf>, *cert denied*, 2020 WL 1668293 (Apr. 6, 2020); H.R. Rep. No. 106-192, at 14 (1999) (Civil Asset Forfeiture Reform Act, to accompany H.R. 1658), <https://www.congress.gov/106/crpt/hrpt192/> CRPT-106hrpt192.pdf; Brief of Practicing Attorneys as Amicus Curiae in Support of Petitioner, Pet. for Writ of Certiorari,



- Salgado* (No. 19-659), [https://www.supremecourt.gov/DocketPDF/19/19-659/125781/20191217105518703\\_39121%20pdf%20MacRoberts.pdf](https://www.supremecourt.gov/DocketPDF/19/19-659/125781/20191217105518703_39121%20pdf%20MacRoberts.pdf); Brief of Law and Economics Scholars as Amicus Curiae in Support of Petitioner, Pet. for Writ of Certiorari, *Salgado* (No. 19-659), [https://www.supremecourt.gov/DocketPDF/19/19-659/125883/20191217164124310\\_Salgado%20Amicus%20Brief%20TO%20FILE.pdf](https://www.supremecourt.gov/DocketPDF/19/19-659/125883/20191217164124310_Salgado%20Amicus%20Brief%20TO%20FILE.pdf)
62. McDonald, J. (2019, Apr. 10). Civil forfeiture hurts America's poor. *Spotlight on Poverty and Opportunity*. <https://spotlightonpoverty.org/spotlight-exclusives/civil-forfeiture-hurts-americas-poor/>; Southern Poverty Law Center. (2017). *Civil asset forfeiture: Unfair, undemocratic, and un-American*. Montgomery, AL. <https://www.splcenter.org/20171030/civil-asset-forfeiture-unfair-undemocratic-and-un-american>
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65. See, e.g., Feuer, A. (2019, July 7). El Chapo earned \$12,666,181,704, prosecutors say. They want him to pay it back. *The New York Times*. <https://www.nytimes.com/2019/07/07/nyregion/el-chapo-trial-money.html>; Rosenstein, R. J. (2017, Nov. 9). Bernie Madoff and the case for civil asset forfeiture. *The Wall Street Journal*. <https://www.wsj.com/articles/bernie-madoff-and-the-case-for-civil-asset-forfeiture-1510237360>; U.S. Department of Justice Office of Public Affairs. (2020a, Feb. 24). Leader of Guatemalan drug trafficking organization sentenced to 23 years in prison [Press release]. <https://www.justice.gov/opa/pr/leader-guatemalan-drug-trafficking-organization-sentenced-23-years-prison>; U.S. Department of Justice Office of Public Affairs. (2020c, June 29). Chinese national guilty of laundering millions for Mexican drug cartels [Press release]. <https://www.justice.gov/usao-edva/pr/chinese-national-guilty-laundering-millions-mexican-drug-cartels>; U.S. Department of Justice Office of Public Affairs. (2020b, June 3). Justice Department seeks forfeiture of more than \$20 million in assets relating to unlawful use of U.S. financial system to evade and violate Iranian sanctions [Press release]. <https://www.justice.gov/opa/pr/justice-department-seeks-forfeiture-more-20-million-assets-relating-unlawful-use-us-financial>
66. We limited our median value analysis to currency because it is reliably valued, while other property requires appraisal and such estimates are often subjective or inaccurate.
67. 2016 Fla. Laws 179 (reform entitled "Contraband Forfeiture" approved by governor on April 1, 2016, original Florida Senate bill was CS/CS/SB 1044).
68. Florida has no statewide data before 2017, so we cannot compare counts or values of currency forfeitures to gauge the reform's specific effects.
69. Ciaramella, 2017a.
70. Ciaramella, C. J. (2016, Sept. 15). New Jersey police seize \$171 from man, charge him \$175 to challenge it. *Reason*. <https://reason.com/2016/09/15/new-jersey-police-seize-171-from-man-cha/>; New Jersey Rules of Court, Rule 1:43 (establishing filing fees).
71. Estimate is based on information including hourly estimates from two anonymous state forfeiture attorneys. See also: Canterbury Law Group. (n.d.). How much does a criminal defense lawyer cost? Scottsdale, AZ. <https://canterburylawgroup.com/criminal-lawyer-cost/>
72. U.S. Attorney's Office for the District of Columbia. (n.d.). *USAO attorney's fees matrix — 2015–2020*. <https://www.justice.gov/usao-dc/page/file/1189846/>
73. Bologna, G. (2020, July 31). A rental car owner wanted to help police solve a drug crime. Instead they took his car. *Clarion Ledger*. <https://www.clarionledger.com/story/news/politics/2020/07/31/asset-forfeiture-mississippi-police-seize-rental-car-drug-case/5442877002/>
74. Haw. Rev. Stat § 712A-10. Administrative forfeiture, Haw. Rev. Stat § 712A-10(9); R.I. Gen. Laws § 21-28-5.04.2(h)(7); Neb. Rev. St. § 28-431(7).
75. Pet. for Writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit, *Salgado v. United States*, No. 19-659, 2019 WL 6245392 (Nov. 19, 2019), <https://ij.org/wp-content/uploads/2019/11/Salgado-v.-United-States-of-America-Petition-for-a-Writ-of-Certiorari.pdf>, *cert denied*, 2020 WL 1668293 (Apr. 6, 2020).
76. Federal administrative forfeiture is provided for by 18 U.S.C. § 983 and 19 U.S.C. § 1607. D.C.'s administrative forfeiture procedure is set out in D.C. Code § 41-305. The states that have administrative forfeiture are Alaska (Alaska Stat. § 17.30.116), Arizona (Ariz. Rev. Stat. § 13-4309), California (Cal. Health & Safety Code § 11488.4(j)), Delaware (Del. Code Ann. tit. 16, § 4784), Georgia (Ga. Code Ann. § 9-16-11), Hawaii (Haw. Rev. Stat. § 712A-10), Illinois (725 Ill. Comp. Stat. 150/6), Iowa (Iowa Code §§ 809A.8, -.11, -.16), Kansas (Kan. Stat. Ann. §§ 60-4109, -10, -11, -16), Louisiana (La. Stat. Ann. §§ 40:2605, 08, 09, 10, 15), Michigan (Mich. Comp. Laws §§ 333.7523; 600.4707), Minnesota (Minn. Stat. § 609.5314), Oregon (Or. Rev. Stat. §§ 131A.105, -150, -165, -200, -225), Rhode Island (R.I. Gen. Laws § 21-28-5.04.2(h)), Tennessee (Tenn. Code Ann. §§ 40-33-201 et. seq.; § 53-11-201), Washington (Wash. Rev. Code § 69.50.505), and West Virginia (W. Va. Code § 60A-7-705a). While administrative forfeiture procedures lack any judicial involvement, Arizona, Delaware, Iowa, Kansas, Louisiana, and Oregon involve the courts for the very limited purpose of obtaining a court order of forfeiture. Such an order is based on little more than an affidavit signed by the prosecutor. Ariz. Rev. Stat. § 13-4314(A); Del. Code. Ann. tit. 16, § 4784(j). Iowa Stat. § 809A.16(3) (for property worth more than \$5,000); Kan. Stat. Ann. § 60-4116(a); La. Stat. Ann. § 40:2615(A); Or. Rev. Stat. § 131A.200(1). Mississippi and New Hampshire used to have administrative forfeiture. However, Mississippi passed a bill in 2015 that allowed administrative forfeiture to sunset in 2018. S.B. 2159, 2015 Leg., Reg. Sess. (Miss. 2015). New Hampshire repealed administrative forfeiture in 2016. S.B. 522, 2016 Leg., Reg. Sess. (N.H. 2016).

77. Mich. Comp. Laws § 333.7523(1)(c).
78. In Alaska, Georgia, Tennessee, Washington and West Virginia, property is automatically forfeited if an owner does not file a claim within 30 days (Alaska Stat. § 17.30.116(b); Ga. Code Ann. § 9-16-11(c)(4); Tenn. Code Ann. ST § 40-33-206(c); Wash. Rev. Code § 69.50.505(4); W. Va. Code § 60A-7-705a(e)). California, Hawaii and Rhode Island allow the attorney general to declare property forfeited if an owner does not file a claim (Cal. Health & Safety Code § 11488.4(j)(5)(B); Haw. Rev. Stat. § 712A-10(11); R.I. Gen. Laws § 21-28-5.04.2(h)(8)). Illinois, Michigan, Minnesota and D.C. allow prosecutors and local authorities to declare property forfeited if an owner does not file a claim (725 Ill. Comp. Stat. § 150/6(D); Mich. Comp. Laws § 600.4707(4); Minn. Stat. § 609.5315, subd. 2; D.C. Code § 41-305(c)(1)). Arizona, Delaware, Iowa, Kansas, Louisiana, and Oregon require a court order based on a government affidavit or declaration. Ariz. Rev. Stat. § 13-4314(A); Del. Code. Ann. tit. 16, § 4784(j). Iowa Code § 809A.16(3) (for property worth more than \$5,000); Kan. Stat. Ann. 60-4116(a); La. Stat. Ann. § 40:2615(A); Or. Rev. Stat. § 131A.200(1).
79. U.S. Department of Homeland Security Office of Inspector General. (2020). *DHS inconsistently implemented administrative forfeiture authorities under CAFRA*. <https://www.oig.dhs.gov/sites/default/files/assets/2020-09/OIG-20-66-Jul20.pdf>, p. 5. See also McDonald, J. (2018). *Civil forfeiture, crime fighting and safeguards for the innocent: An analysis of Department of Justice forfeiture data*. Arlington, VA: Institute for Justice. [https://ij.org/wp-content/uploads/2018/11/Forfeiture-White-Paper\\_Final.pdf](https://ij.org/wp-content/uploads/2018/11/Forfeiture-White-Paper_Final.pdf), p. 10.
80. Iowa Code § 809A.8; Kan. Stat. Ann. §§ 60-4109; La. Stat. Ann. § 40:2608. If dissatisfied with the government attorney or prosecutor's decision on their petition, an owner may still file in court.
81. Ariz. Rev. Stat. § 13-4309(1); Haw. Rev. Stat. § 712A-10; R.I. Gen. Laws § 21-28-5.04.2(h); 19 U.S.C. §§ 1613, 1618.
82. Hawaii requires owners to file a cash bond of \$2,500 or 10% of the value of the property (whichever is higher) to transfer an administrative forfeiture to court. Because administrative forfeitures are permitted for personal property worth up to \$100,000 and for any vehicle, regardless of value, the cash bond can easily reach \$10,000 or higher, in the case of an expensive vehicle. Indigent owners are permitted to file paperwork asking for the cash bond to be waived. Haw. Rev. Stat. § 712A-10(9). Rhode Island requires a cash bond of the higher of 10% of the appraised value or \$250. R.I. Gen. Laws § 21-28-5.04.2(h)(7). Tennessee requires claimants to file a bond of \$350. Tenn. Code Ann. § 40-33-206(b)(1). Illinois used to require a bond to challenge administrative forfeiture but repealed it in 2017. H.B. 303, 100th Gen. Assemb., Reg. Sess. (Ill. 2017).
83. Rhode Island and Hawaii require owners to pay attorney fees if they lose. (R.I. Gen. Laws § 21-28-5.04.2(7); Haw. Rev. Stat. § 712A-10(9)).
84. For example, property owners who opt for administrative forfeiture at the federal level generally lose their ability to go to court because they must choose between the two options, which have similar deadlines. See *In re Forfeiture of \$34,905.00 in U.S. Currency*, 96 F. Supp. 2d 1116 (D.Or. 2000). Among federal agencies, only CBP permits property owners to file a claim for judicial forfeiture if they are unsatisfied with the result of the administrative process. And although judicial review generally remains available in Arizona even if an owner files a petition for remission or mitigation, any right to judicial review is forfeited in Hawaii once an owner files such a petition. Haw. Rev. Stat. § 712A-10(4), (11); Ariz. Rev. Stat. § 13-4309(2), (3)(c).
85. DOJ agencies are instructed to pursue administrative forfeiture in nearly every case of seized property. When an agency moves to prosecute a suspect in a case involving seized property, it is supposed to file for both criminal and administrative forfeiture of the property. That way, if no one files a claim for the property, the administrative action is already pending, and the property can be swiftly forfeited by default. See e.g. Chapter 5: Administrative and judicial forfeiture (pp. 81–103) in U.S. Department of Justice Criminal Division Money Laundering and Asset Recovery Section, 2019b; U.S. Department of Justice. (2010). *Justice manual: 9-112.120 – Interplay of administrative forfeiture and criminal forfeiture*. <https://www.justice.gov/jm/jm-9-112000-administrative-and-judicial-forfeiture#9-112.120>
86. U.S. Department of Homeland Security Office of Inspector General, 2020.
87. Kane, J., & Wall, A. (2004). *Identifying the links between white-collar crime and terrorism for the enhancement of local and state law enforcement investigation and prosecution*. National White Collar Crime Center. <https://www.ncjrs.gov/pdffiles1/nij/grants/209520.pdf>
88. Kaczmarek, J. (2015, Oct. 16). Experts warn white-collar crime is here to stay. *GuruFocus*. <https://www.gurufocus.com/news/367746/experts-warn-whitecollar-crime-is-here-to-stay>
89. The White House. (2013). *Now is the time: The President's plan to protect our children and our communities by reducing gun violence*. Washington, DC. [https://obamawhitehouse.archives.gov/sites/default/files/docs/wh\\_now\\_is\\_the\\_time\\_full.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/wh_now_is_the_time_full.pdf)
90. Ultimately, policy decisions regarding federal forfeitures remain a black box, and it is impossible to fully explain the trends. However, one plausible theory is that DOJ policing priorities influence forfeiture trends. Another possible explanation is that property owners are filing relatively more claims than in the past. However, federal claims data are difficult to meaningfully decipher, making this theory difficult to test.
91. Kane, K. T. (2012, Apr. 23). *In re: State asset forfeiture* [Memorandum]. Rocky Hill, CT: Connecticut Office of the Chief State's Attorney; B. Austin (personal communication, Aug. 1, 2016).
92. Connecticut's conviction provision applies in drug, identity theft and sex-trafficking cases, even if forfeiture is uncontested. However, it does not require conviction of an owner, only that a "person" be convicted. H.B. No. 7146, 2017 Sess. (Conn. 2017).

93. Minn. Stat. § 609.5314, subd. 2–3.
94. Both the number of administrative cases and the number of claims seeking judicial review dropped steadily after 2005, down to 64 total administrative petitions and uncontested cases in 2018.
95. Haw. Rev. Stat. § 712A-10(4).
96. In making a claim, owners must file a cash bond of the higher of 10% of the property’s value or \$2,500, unless they are indigent. Owners who fail at trial may end up bearing all the costs of litigation, including the government’s attorney fees. Haw. Rev. Stat. § 712A-10.
97. Haw. Rev. Stat. § 712A-10(11); Department of Hawaii Attorney General, Haw. Administrative Rules § 5-51-32, <https://ag.hawaii.gov/wp-content/uploads/2020/01/Chapter-51-Administrative-Asset-Forfeiture-Effective-January-17-2020.pdf>
98. Haw. Rev. Stat. § 712A-10.
99. Reporting agencies are also the seizing agency in these states, and they may not know what happens to seized property before its final disposition. For example, they may never record a notice of a claim or complaint filed for the property, and states typically do not require that seizures once reported continue to be updated with new information.
100. Ariz. Rev. Stat. § 13-4309; § 13-4311; § 13-4312. The Arizona data also include the few instances where an injured third party filed a claim in court seeking compensation from forfeited property.
101. Rosenstein, 2017.
102. New Mexico Forfeiture Act (NMFA), N.M. Stat. Ann. §§ 31-27-1 to -11 (adopted from H.B. 560, 2015 Leg. (N.M. 2015)).
103. While New Mexico’s 2015 reform did not explicitly prohibit state and local agencies from participating in equitable sharing, prohibiting them from keeping any equitable sharing proceeds effectively amounts to the same thing. This is because equitable sharing guidelines require that proceeds be deposited into a law enforcement account. U.S. Department of Justice & U.S. Department of the Treasury. (2018). *Guide to equitable sharing for state, local, and tribal law enforcement agencies*. <https://www.justice.gov/criminal-afmls/file/794696/download>. Indeed, DOJ data indicate that state and local agencies have not engaged in any equitable sharing since 2015. The few equitable sharing payments DOJ has made to New Mexico agencies since 2015 have gone exclusively to tribal law enforcement agencies, which are exempt from the state’s reforms. New Mexico’s reform also forbade agencies from transferring property worth less than \$50,000 to the federal government for forfeiture. New Mexico Forfeiture Act (NMFA), N.M. Stat. Ann. §§ 31-27-1 to -11 (adopted from H.B. 560, 2015 Leg. (N.M. 2015)).
104. Holcomb, J. E., Williams, M. R., Hicks, W. D., Kovandzic, T. V., Meitl, M. B. (2018). Civil asset forfeiture laws and equitable sharing activity by the police. *Criminology and Public Policy*, 17(1), 1–27; Holcomb, J. E., Kovandzic, T. V., & Williams, M. R. (2011). Civil asset forfeiture, equitable sharing, and policing for profit in the United States. *Journal of Criminal Justice*, 39(3), 273–285; Preciado and Wilson, 2017.
105. *Harjo v. Albuquerque*, 326 F. Supp. 3d 1145, 1152–1162 (D.N.M. 2018); Amended Answer at ¶¶ 1, 10–11, *City of Albuquerque v. One (1) 2014 Nissan 4DR Silver V.I.N. 3N1CN7AP4EL842551*, Civ. Action No. D-202-CV-2016-03614 (N.M. 2nd Jud. Dist., Bernalillo Cnty., Aug. 31, 2016), <https://ij.org/wp-content/uploads/2016/08/Harjo-Amended-Answer-Aug-2016-IJ080892xA6322.pdf>
106. *Harjo v. Albuquerque*, 326 F. Supp. 3d 1145, 1151 (D.N.M. 2018).
107. *Harjo v. Albuquerque*, 326 F. Supp. 3d 1145, 1151 (D.N.M. 2018).
108. Proposed Consent Decree on Plaintiffs’ Fifth and Sixth Claims for Relief, *Sourovellis, et al., v. City of Philadelphia et al.*, Case No. 2:14-cv-04687, (E.D. Pa. Sept. 18, 2018), Doc. No. 253-1 at 10–11, [https://ij.org/wp-content/uploads/2014/08/Executed-Consent-Decree\\_Claims-5-and-6.pdf](https://ij.org/wp-content/uploads/2014/08/Executed-Consent-Decree_Claims-5-and-6.pdf); Proposed Consent Decree on Plaintiffs’ Claims for Injunctive Relief Regarding the Courtroom Claims (Claims Three, Four, Six, and Seven), Doc. No. 252-1 at 12–38, [https://ij.org/wp-content/uploads/2014/08/Executed-Consent-Decree\\_Courtroom-Claims.pdf](https://ij.org/wp-content/uploads/2014/08/Executed-Consent-Decree_Courtroom-Claims.pdf); Order, Doc. No. 272 (E.D. Pa. Apr. 30, 2019), <https://ij.org/wp-content/uploads/2014/08/ECF-272-Order-granting-Motions-for-Preliminary-Approval-on-Claims-5-6-IJ104092xA6322.pdf> (court order preliminary approving consent decrees).
109. Institute for Justice. (n.d.). *Philadelphia’s civil forfeiture machine facts and figures*. Arlington, VA. <https://ij.org/philadelphia-facts-and-figures/>
110. Kelly, 2019.
111. Holcomb et al., 2018; Holcomb, Kovandzic, and Williams, 2011; Worrall, J., & Kovandzic, T. (2008). Is policing for profit? Answers from asset forfeiture. *Criminology and Public Policy*, 7, 219–244; Kucher, C. (2005). *Asset forfeiture: State restrictions and equitable sharing*. Master’s Thesis, University of New Hampshire, Durham, NH; Preciado and Wilson, 2017; Miller, J. M., & Selva, L. H. (1994). Drug enforcement’s double-edged sword: An assessment of asset forfeiture programs. *Justice Quarterly*, 11(2), 313–335.
112. Kelly, 2019.
113. This is the same reform that introduced the state’s \$1,000 filing fee and \$1,500 bond requirement for the government. As discussed in “Big-Time Criminals or Small-Time Forfeitures?” on p. 20, these provisions render lower-value forfeitures less profitable, as well as riskier, for law enforcement. 2016 Fla. Laws 179 (reform entitled “Contraband Forfeiture” approved by governor on April 1, 2016, original Florida Senate bill was CS/CS/SB 1044).
114. H.B. 18-1020, 72nd Gen. Assemb., Reg. Sess. (Colo. 2018); Goodland, M. (2018, May 2). Attempt to fix Colorado’s 2017 civil asset forfeiture bill moves forward. *The Gazette*. [https://gazette.com/government/attempt-to-fix-colorados-2017-civil-asset-forfeiture-bill-moves-forward/article\\_c73e8a1f-b3b7-5c7d-a43a-76e19798a068.html](https://gazette.com/government/attempt-to-fix-colorados-2017-civil-asset-forfeiture-bill-moves-forward/article_c73e8a1f-b3b7-5c7d-a43a-76e19798a068.html). The program awards community service grants to “law enforcement agenc[ies] or ... group[s] of county or municipal entities or community organizations, so long as one of the agencies or entities is a law enforcement agency.” Generally, this report does not count such programs as part of law

- enforcement's financial incentive. However, Colorado's program appears unique in allowing agencies to spend community improvement funds on technology and training, which benefit law enforcement.
115. S.B. 99, 2018 Leg., Reg. Sess. (Ind. 2018); *Horner v. Curry*, 125 N.E.3d 584, 597–607 (Ind. 2019).
  116. Ind. Code §§ 34-6-2-73, 34-24-1-4 (2002) (amended in 2018 and 2019).
  117. Ind. Const. art. 8, § 2
  118. Guerra, K. (2015, Feb. 22). In some cases, police seize cars, homes—with no charges filed. *The Indianapolis Star*. <https://www.indystar.com/story/news/crime/2015/02/22/cases-police-seize-cars-homes-charges-filed/23802807/>; Gillers, H., Alesia, M., & Evans, T. (2010, Nov. 7). Forfeiture law invites abuse of the system. *The Indianapolis Star*.
  119. Complaint, *Horner v. Curry* (Super. Ct. of Marion Cnty., Ind., Feb. 10, 2016), <https://ij.org/wp-content/uploads/2016/02/Horner-v-Curry-COMPLAINT.pdf>
  120. S.B. 99, 2018 Leg., Reg. Sess. (Ind. 2018).
  121. *Horner v. Curry*, 125 N.E.3d 584, 597–607 (Ind. 2019).
  122. Maine, Maryland, Missouri, New Mexico, North Carolina and Wisconsin.
  123. Prohibitions on law enforcement's use of forfeiture funds often permit agencies to retain certain expenses related to the costs of the forfeiture process, as does IJ's model criminal forfeiture law. See, e.g., Md. Code Ann., Crim. Proc. § 12-403 (2018); Mo. Rev. Stat. § 513.623 (2019); N.M. Stat. Ann. § 31-27-7 (2019). See also Institute for Justice. (2020). *Criminal Forfeiture Process Act* [Model legislation]. Arlington, VA. <https://ij.org/wp-content/uploads/2020/07/07-23-2020-Criminal-forfeiture-legislation-FULL.pdf>
  124. New Mexico Forfeiture Act (NMFA), N.M. Stat. Ann. §§ 31-27-1 to -11 (adopted in 2015 from New Mexico Legislature, H.B. 560); D.C. Council, Civil Asset Forfeiture Amendment Act of 2014, 20-48. (2014).
  125. Mo. Const. art. IX, § 7; Wis. Const. art. X, § 2.
  126. Wis. Stat. § 961.55(5)(b), (e).
  127. *Public Hearing on S.B. 521 Before the Wisconsin Senate Committee on Labor and Government Reform*, 2015 Legis. (Testimony of Ron Cramer, Eau Claire County Sheriff, [https://docs.legis.wisconsin.gov/misc/lc/hearing\\_testimony\\_and\\_materials/2015/sb521/sb0521\\_2016\\_01\\_26.pdf](https://docs.legis.wisconsin.gov/misc/lc/hearing_testimony_and_materials/2015/sb521/sb0521_2016_01_26.pdf).)
  128. Wisconsin Department of Administration Division of Executive Budget and Finance. (2017). Fiscal estimate -2017 Session, SB061. [http://docs.legis.wisconsin.gov/2017/related/fe/sb61/sb61\\_DA.pdf](http://docs.legis.wisconsin.gov/2017/related/fe/sb61/sb61_DA.pdf)
  129. S.B. 61, 2018–19 Legis., Reg. Sess. (Wis. 2018).
  130. Me. Rev. Stat. Ann. tit. 15 §§ 5822(4), 5824.
  131. Neumann, D. (2018a, Oct. 18). Maine law enforcement fails to report money seized in drug busts. *Maine Beacon*. <http://mainebeacon.com/maine-law-enforcement-fails-to-report-money-seized-in-drug-busts/> and Neumann, D. (2018b, Oct. 26). Maine law enforcement is keeping drug bust money meant for state general fund. *Maine Beacon*. <http://mainebeacon.com/maine-law-enforcement-is-keeping-drug-bust-money-meant-for-state-general-fund/>
  132. *Bennis v. Michigan*, 516 U.S. 442 (1996).
  133. First Amended Complaint, *Ingram et al. v. Cnty. of Wayne*, No. 2:20-cv-10288-AJT-EAS (E.D. Mich. May 11, 2020), ECF No. 12, <https://ij.org/wp-content/uploads/2020/02/Amended-Complaint.pdf>.
  134. Arnold, T. (2018, Oct. 27). Wayne County took cars from 380 people never charged with a crime. *Michigan Capitol Confidential*. <https://www.michigancapitolconfidential.com/wayne-county-took-cars-from-380-people-never-charged-with-a-crime>
  135. *Harjo v. Albuquerque*, 326 F.Supp.3d 1145, 1155 (D.N.M. 2018).
  136. Notably, Michigan's nuisance abatement statute, under which Wayne County pursues many of its vehicle forfeitures—and the statute at issue in *Bennis v. Michigan*—does not provide an innocent owner defense.
  137. First Amended Complaint, *Ingram et al., v. Cnty. of Wayne*, No. 2:20-cv-10288-AJT-EAS, (E.D. Mich. May 11, 2020), ECF No. 12.
  138. *Harjo v. Albuquerque*, 326 F. Supp. 3d 1145, 1153 (D.N.M. 2018).
  139. First Amended Complaint, *Ingram et al., v. Cnty. of Wayne*, No. 2:20-cv-10288-AJT-EAS, (E.D. Mich. May 11, 2020), ECF No. 12; *Harjo v. Albuquerque*, 326 F. Supp. 3d 1145, 1153–1154 (D.N.M. 2018).
  140. Owners may be required to prove they were not willfully blind to the illegal use so that it cannot be said they should have known about the illegal use. See *United States v. Prince*, 214 F.3d 740, 761 (6th Cir. 2000); *United States v. Four Hundred Sixty Three Thousand Four Hundred Ninety Seven Dollars and Seventy Two Cents (\$463,497.72) in U.S. Currency From Best Bank Account*, 779 F. Supp. 2d 696, 707–8 (E.D. Mich. 2011). Further, owners may have to prove they took reasonable steps to prevent the illegal use. See *United States v. One Parcel of Real Estate at 1012 Germantown Road, Palm Beach County, Fla.*, 963 F.2d 1496, 1504 (11th Cir. 1992).
  141. *Harjo v. Albuquerque*, 326 F. Supp. 3d 1145, 1193 (D.N.M. 2018).
  142. *Nelson v. Colorado*, 137 S. Ct. 1249, 1256 (2017).
  143. In a few states—Alaska, Delaware, Rhode Island and South Carolina—the standard of proof refers to the burden *owners* must meet to prove their property is not subject to forfeiture. In these states, seizure of property leads to a rebuttable presumption in favor of forfeiture unless owners can prove the property is innocent. *Resek v. State*, 706 P.2d 288, 290–91 (Alaska 1985); see also Alaska Stat. §§ 17.30.110, .114(a); Del. Code Ann. tit. 16, § 4784(a)–(j); Del. Super. Ct. Civ. R. 71.3; *Brown v. State*, 214 A.3d 922, 926–27 (Del. 2019); *Brown v. State*, 721 A.2d 1263, 1265 (Del. 1998); *In re One 1987 Toyota*, 621 A.2d 796, 799 (Del. Super. Ct. 1992); R.I. Gen. Laws § 21-28-5.04.2(p); S.C. Code Ann. §§ 44-53-520(b), -586(b); *Pope v. Gordon*, 633 S.E.2d 148, 151 (S.C. 2006).
  144. Cassella, S. D. (2013). Civil asset recovery: The American experience. *Eucrium*, 3, 98–104. <https://eucrium.eu/articles/civil-asset-recovery-american-experience/>.
  145. Importantly, the criminal forfeiture process in New Mexico and Nebraska takes into consideration those rare occurrences where convictions are impossible, such as the death, deportation or flight of the defendant, and allows for the forfeiture to occur as an exception to the rule. N.M. Stat. Ann. § 31-27-7(G); Neb. Rev. Stat. § 28-1601(7)-(9).

146. This edition's grading scale for standard of proof was modified to incorporate this revised view of conviction provisions while maintaining as much continuity as possible with the second edition. This edition gives highest marks to criminal forfeiture, followed by conviction provisions of varying strength, regardless of the distinct standards of proof for property. States without a conviction provision then follow, according to their standards for property alone. To make room within the scale, the grades for clear and convincing evidence were reduced slightly. This resulted in lower standard of proof grades for Colorado, D.C., New York and Utah even though their laws did not change. It also elevated New Mexico's standard of proof grade to the highest level.
147. In fact, this edition's grading scale for standard of proof downgrades Minnesota, Oregon and Vermont compared to the second edition precisely because of their conviction provisions' weaknesses.
148. Minn. Stat. § 609.531 subd. 6 (original bill 2013–14 Minn. S.F. No. 874).
149. Data are from the Minnesota State Auditor's annual forfeiture reports.
150. More research with better data is needed to determine conviction provisions' effects on forfeiture activity. In addition, effects will likely vary by state, depending on the details of the provisions themselves as well as other aspects of states' civil forfeiture laws. Most provisions were adopted either too recently to allow us to examine trends or in tandem with other reforms, making it impossible to isolate their effects. In some cases, available data are unreliable.
151. A few states will even waive the conviction provision if a defendant enters an immunity agreement with the prosecution, thus allowing defendants to use property, including property that is not theirs, to bargain for leniency to the detriment of innocent owners. This and other exceptions, such as the failure of the person from whom the property was seized (including a non-owner) to contest forfeiture or the failure of the defendant to appear at trial, remove what little protection the conviction provision might have provided to innocent owners. See, e.g., Ark. Code Ann. § 5-64-505(m)(2) (C); Md. Code Ann., Crim. Proc. §§ 12-103(d)(2); Wis. Stat. Ann. § 961.555(2)(am)(3).
152. Mich. Comp. Laws § 333.7521a(6); Minn. Stat. Ann. §§ 609.5314, subd. 2–3.
153. Cal. Health & Safety Code § 11488.4(i)(1), (2).
154. N.J. Stat. Ann. § 2C:64-3(k)(2); Iowa Code Ann. §§ 809A.1(4), 809A.12A(1).
155. H.B. 2477, 2017 Leg. (Ariz. 2017); H.B. 17-1313, 72nd Gen. Assemb., Second Reg. Sess. (Colo. 2017); H.B. 2459, 2017–18 Legis., Reg. Sess. (Kan. 2018); S. 1963, Reg. Sess. 2018–19 (N.J. 2020).
156. H.B. 2477, 2017 Leg. (Ariz. 2017); S.B. 443, 2015–16 Leg. Sess., Reg. Sess. (Cal. 2016), H.B. 17-1313, 71st Gen. Assemb., Reg. Sess. (Colo. 2016), H.B. 336, 2016 Leg. (Md. 2016); L.B. 1106, 2015–16 Leg., 104th Leg. Sess. (Neb. 2016), H.B. 347, 131st Gen. Assemb., Reg. Sess. (Ohio 2017), S.B. 8, Pa. Gen. Assemb., Reg. Sess. 2017–18 (Pa. 2018), S.B. 61, Reg. Sess. (Wis. 2018). In addition, D.C.'s anticircumvention reform, passed in 2015, went into effect in 2018. D.C. Council, Civil Asset Forfeiture Amendment Act of 2014, 20-48. (2014).
157. H.B. 447, 2018 Leg., (Idaho 2018); H.B. 336/S.B. 161, 2016 Leg. (Md. 2016).
158. H.B. 1286, 66th Legis. Assemb. (N.D. 2019).
159. 2016 Fla. Laws 179 (reform entitled "Contraband Forfeiture" approved by governor on April 1, 2016, original Florida Senate bill was CS/CS/SB 1044).
160. Arizona's reform mandated outside approvals for expenditures of forfeiture proceeds. H.B. 2477, 2017 Leg. (Ariz. 2017). Maryland's earmarked 20% of forfeiture proceeds for drug treatment and education programs. H.B. 336/S.B. 161, 2016 Leg. (Md. 2016). Pennsylvania's barred agencies from using forfeiture proceeds for contributions to political campaigns, judicial trainings or alcoholic beverages. S.B. 8, Pa. Gen. Assemb., Reg. Sess. 2017–18 (Pa. 2018). And Wisconsin's required agencies to document expenses paid with forfeiture funds. S.B. 61, Reg. Sess. (Wis. 2018).
161. 2016 Fla. Laws 179 (reform entitled "Contraband Forfeiture" approved by governor on April 1, 2016, original Florida Senate bill was CS/CS/SB 1044); S.B. SF 46, 64th Legis. Sess., Budget Sess. (Wyo. 2016); H.B. 812, 2017 (Miss. 2017); H.B. 2021, 110th Gen. Assemb., Reg. Sess. (Tenn. 2018).
162. S.B. 8, Pa. Gen. Assemb., Reg. Sess. 2017–18 (Pa. 2018); S.B. 61, Reg. Sess. (Wis. 2018); S.B. 522, 2016 Leg., Reg. Sess. (N.H. 2016). In addition, a bill passed in 2015 allowed administrative forfeiture to sunset in Mississippi in 2018. S.B. 2159, 2015 Leg., Reg. Sess. (Miss. 2015);
163. H.B. 4629, 2017–18 Leg., 99th Sess. (Mich. 2017); H.B. 303, 100th Gen. Assemb., Reg. Sess. (Ill. 2017).
164. H.B. 447, 2018 Leg., (Idaho 2018); H.B. 1286, 66th Legis. Assemb. (N.D. 2019).
165. H.B. 2477, 2017 Leg. (Ariz. 2017); 2016 Fla. Laws 179 (reform entitled "Contraband Forfeiture" approved by governor on April 1, 2016, original Florida Senate bill was CS/CS/SB 1044); H.B. 2021, 110th Gen. Assemb., Reg. Sess. (Tenn. 2018); S.B. 87, 2017 Gen. Sess. (Utah 2017); S.B. 61, Reg. Sess. (Wis. 2018).
166. H.B. 4002, 2019–20 Leg., 100th Sess. (Mich. 2019); S.B. SF 46, 64th Legis. Sess., Budget Sess. (Wyo. 2016).
167. H.B. 447, 2018 Leg., (Idaho 2018); S.B. 99, 2018 Leg., Reg. Sess. (Ind. 2018).
168. S.B. 87, 2017 Gen. Sess. (Utah 2017).
169. S.F. 151, 2017–18 Leg., 90th Sess. (Minn. 2017).
170. S.B. 45, 2016 Gen. Assemb., Reg. Sess. (Va. 2016); H.B. 61, 65th Legis. Sess., Budget Sess. (Wyo. 2018).
171. Motion to Set Aside Entry of Default, *In re to U.S. Currency Totaling \$91,800.00*, Dkt. 187-824 (Wyo. 1st Jud. Dist., Laramie Cnty., Nov. 16, 2017), <https://ij.org/wp-content/uploads/2017/12/Motion-to-Set-Aside-Entry-of-Default.pdf>; <https://ij.org/wp-content/uploads/2017/12/Answer-and-Motion-for-Return-of-Property.pdf>; Lopez, G. (2017b, Dec. 1). Wyoming police took an innocent man's \$91,800. After a

- Vox report, he will get it back. *Vox*. <https://www.vox.com/policy-and-politics/2017/12/1/16726084/phil-parhamovich-cash-wyoming-civil-forfeiture>; Lopez, G. (2018, Mar. 20). Citing Vox story, Wyoming bans practice that police used to take innocent man's \$91,800. *Vox*. <https://www.vox.com/policy-and-politics/2018/3/20/17142526/wyoming-waiver-forfeiture-phil-parhamovich>
172. H.B. 312, 2019 Leg., Reg. Sess. (N.M. 2019).
173. Taxpayer First Act, H.R. 3151, 116th Cong. (2019–20).
174. See, e.g., Carpenter, D. M., & Salzman, L. (2015). *Seize first, question later: The IRS and civil forfeiture*. Arlington, VA: Institute for Justice. <https://ij.org/report/seize-first-question-later/>; Amended Complaint, *Dehko, et al. v. Holder, et al.*, Case No. 13-cv-14085 (E.D. Mich. Dec. 10, 2015), ECF No. 15, [https://ij.org/wp-content/uploads/2013/09/complaint\\_filed-1.pdf](https://ij.org/wp-content/uploads/2013/09/complaint_filed-1.pdf); Rule 41(g) Motion for Return of Property, *In re the Seizure of \$446,651.11*, Case No. 2:14-mc-01288-ARL (E.D.N.Y. Oct. 16, 2014), ECF No. 1, <https://ij.org/wp-content/uploads/2014/10/long-island-forfeiture-motion-for-return-of-property-10-16-14-1.pdf>; Response of Claimants to Plaintiff's Motion for Voluntary Dismissal, *United States v. \$107,702.66 in U.S. Currency Seized from Lumbee Guaranty Bank Account No. 82002495*, Case No. 7:14-cv-00295-F (E.D.N.C. May 29, 2015), ECF No. 23, [https://ij.org/wp-content/uploads/2015/05/ECF-No.-23\\_Response\\_Motion-for-Voluntary-Dismissal-Without-Prejudice\\_FINAL-IJ069895xA6322.pdf](https://ij.org/wp-content/uploads/2015/05/ECF-No.-23_Response_Motion-for-Voluntary-Dismissal-Without-Prejudice_FINAL-IJ069895xA6322.pdf); Pet. For Remission or Mitigation of Randy and Karen Sowers, U.S. Dep't of Justice (July 16, 2015), <https://ij.org/wp-content/uploads/2015/07/irs-forfeiture-petitions-randy-sowers-petition.pdf>; Pet. For Remission or Mitigation of Khalid Quran, U.S. Internal Rev. Service (July 16, 2015), <https://ij.org/wp-content/uploads/2015/07/irs-forfeiture-petitions-ken-quran-petition.pdf>; Dewan, S. (2014a, Oct. 25.). Law lets I.R.S. seize accounts on suspicion, no crime required. *The New York Times*. <https://www.nytimes.com/2014/10/26/us/law-lets-irs-seize-accounts-on-suspicion-no-crime-required.html>; Dewan, S. (2014b, Dec. 13). I.R.S. asset seizure case is dropped by prosecutors. *The New York Times*. <https://www.nytimes.com/2014/12/14/us/irs-asset-forfeiture-case-is-dropped.html>; Dewan, S. (2015b, Apr. 30). Rules change on I.R.S. seizures, too late for some. *The New York Times*. [https://www.nytimes.com/2015/05/01/us/politics/rules-change-on-irs-seizures-too-late-for-some.html?\\_r=0](https://www.nytimes.com/2015/05/01/us/politics/rules-change-on-irs-seizures-too-late-for-some.html?_r=0)
175. Treasury Inspector General for Tax Administration. (2017b, Apr. 4). Criminal investigation enforced structuring laws primarily against legal source funds and compromised the rights of some individuals and businesses [Press release]. [https://www.treasury.gov/tigta/press/press\\_tigta-2017-05.htm](https://www.treasury.gov/tigta/press/press_tigta-2017-05.htm); Treasury Inspector General for Tax Administration. (2017a). *Criminal investigation enforced structuring laws primarily against legal source funds and compromised the rights of some individuals and businesses*. Washington, D.C. <https://www.treasury.gov/tigta/auditreports/2017reports/201730025fr.pdf>
176. Taxpayer First Act, H.R. 3151, 116th Cong. (2019–20).
177. U.S. Department of Justice and U.S. Department of the Treasury, 2018.
178. U.S. Department of Justice Office of Public Affairs, 2017; Freivogel and Wright, 2019; U.S. Drug Enforcement Administration. (2017, May 19). Equitable sharing program “takes the profit out of crime and benefits public safety” [Press release]. <https://www.dea.gov/press-releases/2017/05/19/equitable-sharing-program-takes-profit-out-crime-and-benefits-public>
179. Kelly, 2019.
180. Office of U.S. Attorney General. (2015, Jan. 16.) *Order on prohibition on certain federal adoptions of seizures by state and local law enforcement agencies*. <https://www.justice.gov/file/318146/download>; U.S. Department of Justice Office of Public Affairs. (2015, Jan. 16). Attorney General prohibits federal agency adoptions of assets seized by state and local law enforcement agencies except where needed to protect public safety [Press release]. <https://www.justice.gov/opa/pr/attorney-general-prohibits-federal-agency-adoptions-assets-seized-state-and-local-law>; U.S. Department of the Treasury Executive Office for Forfeiture. (2015, Jan. 16). Policy limiting the federal adoption of seizures by state and local law enforcement agencies (Directive No. 34).
181. U.S. Department of Justice Criminal Division Asset Forfeiture and Money Laundering Section. (2009). *Guide to equitable sharing for state and local law enforcement agencies*. <http://www.justice.gov/sites/default/files/usao-ri/legacy/2012/03/26/esguidelines.pdf>
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188. Authors' calculations based on DOJ's Consolidated Assets Tracking System, updated April 3, 2020, <https://www.justice.gov/afp/freedom-information-act>. A DOJ OIG report confirms this finding. U.S. Department of Justice Office of the Inspector General Evaluation and Inspections Division, 2017. Treasury does not report how many of its equitable sharing forfeitures are adoptions versus joint operations, though it does conduct both types. See, e.g., U.S. Department of the Treasury. (2017, July 26). *Request for adoption of state or local seizure*. [https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/Request-For-Adoption-Form-2.0\\_Treasury.pdf](https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/Request-For-Adoption-Form-2.0_Treasury.pdf). It is therefore impossible to determine the effect of the policy change on Treasury's equitable sharing activity.
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201. Amended Complaint at ¶¶ 27, 31, *Diaafar v. Wright, et al.*, File No. 19-cvd-2704 (Cumberland Cnty. District Ct., General Court of Justice, North Carolina, June 19, 2019).
202. H.B. 2477, 53rd Leg., Reg. Sess. (Ariz. 2017); H.B. 336/S.B. 161, 2016 Leg., 436th Sess. (Md. 2016); L.B. 1106, 2015–16 Leg., 104th Leg. Sess. (Neb. 2016); H.B. 560, 2015 Leg., 52nd Leg. Sess. (N.M. 2015); H.B. 347, 131st Gen. Assemb., Reg. Sess. (Ohio 2017).
203. Authors' calculations based on DOJ's Consolidated Assets Tracking System, updated April 3, 2020, <https://www.justice.gov/afp/freedom-information-act>
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206. S.B. 443, 2015–16 Leg. Sess., Reg. Sess. (Cal. 2016); H.B. 17-1313, 71st Gen. Assemb., Reg. Sess. (Colo. 2016).
207. California permits law enforcement to keep equitable sharing proceeds from forfeitures less than \$40,000 provided the federal government has secured a criminal conviction against a defendant for a crime giving rise to forfeiture. S.B. 443, 2015–16 Leg. Sess., Reg. Sess. (Cal. 2016).
208. Called the Law Enforcement Assistance Grant Program, this is a different program than the Law Enforcement Community Services Grant Program, though they were created by the same reform. Because the LEAGP is funded legislatively, and not by forfeiture proceeds, this report does not count it toward Colorado's financial incentive. H.B. 18-1020, 72nd Gen. Assemb., Reg. Sess. (Colo. 2018); Goodland, 2018.
209. S.B. 61, Reg. Sess. (Wis. 2018) (adding subsection (1)(r) to Wis. Stat. § 961.55).
210. McDonald, 2018.
211. U.S. Department of Justice Office of Public Affairs, 2017; McVeigh and Sutton, 2018; U.S. Department of Justice,

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214. DOJ, which litigates all federal forfeitures, including Treasury forfeitures, has a policy requiring seized cash to meet a minimum threshold of \$5,000. It also requires "additional safeguards" for adoptive forfeitures of cash less than \$10,000. U.S. Department of Justice Criminal Division Money Laundering and Asset Recovery Section, 2019b.
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226. Rosenstein, 2017.
227. While DEA claims to have returned more than \$4 billion to crime victims between 2000 and 2016, DOJ's OIG could substantiate DEA returned just \$14 million to crime victims over that period. U.S. Department of Justice Office of the Inspector General Evaluation and Inspections Division, 2017. For an analysis of the federal government's expenditures, see the federal government's profile on p. 162.



228. U.S. Department of Justice and U.S. Department of the Treasury, 2018, p. 16.
229. For example, Florida requires law enforcement to spend at least 25% of forfeiture proceeds on community drug education programs. 2016 Fla. Laws 179 (reform entitled “Contraband Forfeiture” approved by governor on April 1, 2016, original Florida Senate bill was CS/CS/SB 1044). Similarly, Michigan requires a quarter of non-drug forfeiture proceeds be spent to help victims, though agencies do not report any additional optional spending on victims. Mich. Comp. Laws § 600.4708(1)(f). However, as Figures 26 and 27 show, both states report spending far less than 25% of proceeds for these purposes. Colorado also has a law directing 25% of forfeiture proceeds—one-third of law enforcement’s 75% stake—to the Law Enforcement Community Services Grant Program and another 25% to the state Office of Behavioral Health’s contracted services organization. We did not obtain data for these disbursements, which appear to be tracked separately, so we excluded Colorado from Figures 26 and 27. H.B. 18-1020, 72nd Gen. Assemb., Regular Sess. (Colo. 2018); Colo. Rev. Stat. §§ 16-13-311(3)(a)(VII); Colorado Office of Behavioral Health. (2017). *Annual accounting of forfeited property dollars report fiscal year 2016–2017*, p. 15. Georgia’s state agency forfeiture funds are required to go to victims, community programs and indigent representation, though our expenditure data purport to represent only district attorney and law enforcement agency spending. Ga. Code Ann. § 9-16-19 (4)(B)(ii). South Dakota non-drug forfeiture proceeds go to victims, though our expenditure data capture only attorney general spending from the state’s drug control fund. S.D. Codified Laws § 23A-49-20.
230. Arizona, Florida, Georgia, Hawaii Department of the Attorney General, Massachusetts District Attorneys and Office of the Attorney General, Oklahoma, Oregon, Pennsylvania, South Dakota Attorney General, Tennessee Department of Safety and Homeland Security, Texas, Utah and Virginia. We also have expenditure data for Illinois and Michigan but could not include these states in Figure 25 because Illinois did not report for 2018 and Michigan reported only percentages, not dollar amounts we could sum with other states’ expenditures. These states are included in Figures 26 and 27, which report Michigan’s original reported percentages.
231. Utah does not allow agencies to spend forfeiture proceeds on personnel. Utah Code Ann. § 24-4-117(10)(a). States have varying numbers of expenditure categories, and their definitions of similar categories vary. To create the expenditure categories for this report, we assigned similar reported categories across states to new groupings. Often, this meant lumping smaller categories together into broader categories. But some states have very broad categories, which required us to make a judgment call. For example, this report has separate categories for operating expenses and capital and equipment expenditures, but Utah tracks capital and operating expenditures as a single category. We coded these expenditures as capital expenditures.
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233. Arizona, Florida, Georgia, Hawaii Department of the Attorney General, Illinois, Massachusetts District Attorneys and Office of the Attorney General, Michigan, Oklahoma, Oregon, Pennsylvania, South Dakota Attorney General, Tennessee Department of Safety and Homeland Security, Texas, Utah and Virginia. Michigan reported only percentages, not dollar amounts we could sum with other states’ expenditures. Figures 26 and 27 therefore report Michigan’s original reported percentages.
234. Texas agencies report money returned to crime victims but do not include those funds in their reported proceeds or reported expenditures. Figure 27 shows that Texas does not track additional spending on victim services.
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## About the Authors



### Lisa Knepper • Senior Director of Strategic Research

Lisa Knepper helps manage the Institute for Justice's strategic research program, which creates policy and social science research on issues central to IJ's mission—educational choice, private property rights, economic liberty and free speech. Knepper co-authored the first and second editions of *License to Work: A National Study of Burdens from Occupational Licensing*, as well as the second edition of *Policing for Profit: The Abuse of Civil Asset Forfeiture* and *Streets of Dreams: How Cities Can Create Economic Opportunity by Knocking Down Protectionist Barriers to Street Vending*.

Her work has appeared in *The Wall Street Journal*, *The Atlantic* online, CNN.com and the journal *Economic Affairs*. IJ's strategic research has been featured in opinions from the U.S. Supreme Court, a White House report on occupational licensing, federal inspector general reports critiquing civil forfeiture practices, numerous scholarly and policy studies, and news outlets nationwide, including *The New York Times*, *The Washington Post*, *The Wall Street Journal*, *USA Today*, *The Boston Globe* and ABC's *Good Morning America*.

Before working as a director of strategic research, Knepper served as IJ's director of communications. Knepper joined IJ in December 2001 from Hill and Knowlton, a global communications firm. She also worked as a media relations and promotions adviser for entertainment and technology companies and as a program coordinator at the Institute for Humane Studies. Knepper graduated from The Ohio State University.



### Jennifer McDonald • Senior Research Analyst

Jennifer McDonald is a senior research analyst at the Institute for Justice, where she conducts original social science research as part of the strategic research team. Her work has appeared in the academic journals *Economic Affairs* and *Food Policy*, and her research results have been cited in national media outlets such as *The Washington Post*, *The New York Times*, *Politico* and the *Los Angeles Times*. Her civil forfeiture research is featured in the IJ reports *Jetway Robbery? Homeland Security and Cash Seizures at Airports*; *Civil Forfeiture, Crime Fighting and Safeguards for the Innocent: An Analysis of Department of Justice Forfeiture Data*; *Forfeiture Transparency & Accountability: State-by-State and Federal Report Cards*; and the second edition of *Policing for Profit: The Abuse of Civil Asset Forfeiture*. She also works closely with IJ's litigation team on cases involving the federal Freedom of Information Act and other public records laws. Prior to joining IJ, McDonald worked in California politics. She holds a Master of Public Administration, with emphases on management and economic policy, from the London School of Economics and Political Science and a bachelor's degree in history with a political science minor from California State University San Marcos.



### Kathy Sanchez • Researcher

Kathy Sanchez is a researcher at the Institute for Justice. Part of her role is managing the strategic research team's inventory of state forfeiture data. She studied political science at North Carolina State University and is a Master of Public Policy student at the University of Massachusetts Dartmouth. Before joining IJ, Sanchez was a deputy clerk for the Wake County Clerk of Superior Court in North Carolina and a research intern at the John Locke Foundation.



### Elyse Smith Pohl • Legal Research and Policy Attorney

Elyse Smith Pohl is a research attorney on the Institute for Justice's strategic research team. She provides legal analysis to complement the original social science research developed by the team. Prior to joining IJ, Pohl worked in private practice representing clients in both litigation and transactional matters. She holds a master's degree in human rights law from the University of Navarra in Spain. In 2013, she earned her law degree, *magna cum laude*, from Ave Maria School of Law, where she was named "Most Dedicated Editor" on law review. She graduated from the University of Virginia with a Bachelor of Arts in Foreign Affairs.

The third edition of *Policing for Profit* presents the largest-ever collection of state and federal forfeiture data. All told, our research team gathered 17 million data points from 45 states, the District of Columbia, and the departments of Justice and the Treasury. For 28 states, we obtained revenue data describing individual forfeited properties—a total of 355,000 properties for the 24 states with usable data. For another 11 states, we obtained revenue data at the level of individual agencies or prosecutors' offices. We also collected data on spending from forfeiture funds for 17 states, the largest collection of such data. The breadth and detail of these data paint the clearest picture to date of forfeiture across the United States.

In pursuit of these forfeiture data, we filed hundreds of public records requests with state and federal agencies, going so far as to sue two of them—the Internal Revenue Service and Customs and Border Protection—when they refused us records. But that was only the beginning. Many colleagues and others helped us obtain these data and turn them into this landmark report. The authors gratefully acknowledge their contributions while claiming any errors or omissions as our own.

## *Editing & Publication Management*

Mindy Menjou expertly edited the text and oversaw the production of the print and web publications. Her editorial contributions improved our work and saved us from many an inadvertent error. And her deft management and sound judgment were critical to bringing this project and its many moving parts to fruition.

## *Data*

Latham & Watkins LLP is representing IJ pro bono in our ongoing suit against the IRS. Morrison & Foerster LLP represented us pro bono in our suit against CBP.

Braden Boucek of the Beacon Center of Tennessee and Christy Horpedahl of the Arkansas Center for Research in Economics assisted us with records requests in their states.

Dick Carpenter led the database design and helped to streamline the cleaning process, thinking many steps ahead for the analysis. Anthony Ward also assisted with the database design. Master Key Interactive helped with database maintenance and updates.

Alec Mena, Kyle Sweetland, Aurora Jacques, Eli Feasley and Anthony Ward cleaned, collected, entered, organized and checked data. Alec and Kyle were particularly helpful, handling much of the workload and lending their keen attention to detail.

Rachel Rozenboom, Amanda Botts, Adam Linthicum, Rachel Hannabass Metz, Marie Miller, Ava Mouton-Johnston and Diana Olazabal also checked data. Rachel Rozenboom also provided key research support, including fact-checking and collecting relevant literature.

## *Legal Research & Methodology*

Keith Diggs and Wesley Hottot oversaw the legal research that went into the report's grades. Keith also researched conviction provisions, helped create the revised grading scheme and provided vital input on a variety of other issues. Wesley also provided input on the report's treatment of conviction provisions and discussion of "excessive" forfeitures.

David Hodges did the legal research for 24 states; Ricard Pochkhanawala for 19 states; and Jaba Tsitsuashvili for 11 states. (There was some overlap.) In addition, Jaba cite-checked some of the legal research, as did Patrick

Jaicomo and Andrew Ward. Melissa LoPresti helped to coordinate the legal research and cite-checking thereof.

Dan Alban, Lee McGrath, Darpana Sheth, Dick Carpenter, Dana Berliner and Scott Bullock weighed in on the treatment of conviction provisions and revised grading scheme.

Darpana and Lee, along with Rich Hoover and Braden Boucek, also advised us on administrative forfeiture, improving our understanding of the many variations of the procedure.

Robert Frommer provided input on the report's discussion of an ongoing legal challenge to South Carolina's civil forfeiture laws.

Nick Sibilla's tracking of forfeiture legislation informed the report's discussion of recent reforms.

Dick Carpenter helped design and refine the methodology for the report's New Mexico analysis and reviewed the results. Dennis Sheehan, Ph.D., also reviewed the report's New Mexico analysis, offering thoughtful feedback on methodology and results.

Ana Pedraza researched state tax seizure laws to help us understand data from North Carolina.

## *Text Review*

Scott Bullock, Dana Berliner, Darpana Sheth, Dan Alban, Wesley Hottot, Keith Diggs, Lee McGrath and Nick Sibilla all reviewed drafts, providing critical feedback on the writing of the report. Robert Frommer, Sam Gedge, Paul Avelar, Arif Panju and Justin Pearson reviewed sections of the report, helping to sharpen its discussion of particular topics.

## *Design & Web*

Laura Maurice-Apel created the attractive design and layout for both the print and web versions of the report, cheerfully bearing with us through data and design software hiccups. Nathalie Walker designed the cover for the print report. Don Wilson oversaw the production process.

Justin Wilson built the infrastructure for the web versions of the State Profiles. Rachel Rozenboom painstakingly entered the data to populate said web versions of the State Profiles.

Adam Gray created the video under Mark Meranta's supervision. Don, Scott Bullock and John Kramer provided guidance on the script. John Ross narrated.

Jason Tiezzi created the data visualizations illustrating key points from the report. Don, Laura, Adam and Justin helped to hone the visualizations. Renée Flaherty, Emily Gammon, Rachel Rozenboom, JoJo Tompkins and Andrew Wimer tested the functionality of the visualizations. Rachel and JoJo, along with Lisa Bergstrom, also checked the data.

## *Proofreading and Cite-Checking*

Evan Lisull proofread the report. Mindy Pava, Caroline Grace Brothers, Renée Flaherty, Joshua House, Rob Johnson and Melissa LoPresti also proofread parts of the report. Evan and Mindy also checked and formatted legal citations. Conor Berg, Rachele Engen and Kim Norberg checked links.

It is likely that we have forgotten other contributors and contributions—and that others will assist us with this report after it goes to print. To them all, we say thank you.



## About IJ

The Institute for Justice is a nonprofit, public interest law firm that litigates to secure economic liberty, educational choice, private property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government. The Institute's strategic research program produces social science and policy research to inform public policy debates on issues central to IJ's mission.

# YOUR PROPERTY OR THEIRS?

The **convoluted process** property owners face when their property is seized for **federal forfeiture**



## CIVIL FORFEITURE

Civil forfeiture can proceed *without* an arrest or criminal charges, and *without* ever going to court.

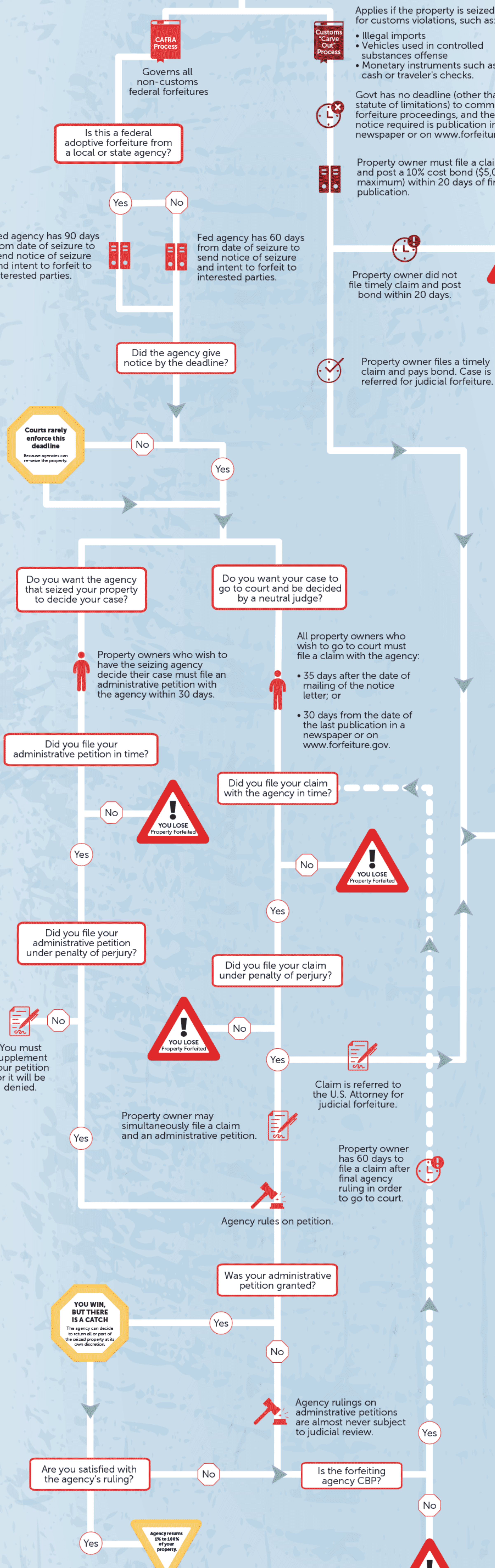
## CRIMINAL FORFEITURE

Criminal forfeiture requires a criminal conviction and is part of a criminal sentence handed down by a judge.



### Administrative Forfeiture

All civil forfeiture cases begin as administrative forfeitures—which are handled by the seizing agency (DEA, CBP, etc.), not a court—and the vast majority end here too.



Criminal defendants have a right to counsel, Fifth Amendment rights, and other important rights that do not apply to civil proceedings, including a presumption of innocence.

Requires conviction (govt proves beyond a reasonable doubt that the defendant is guilty of a crime) to proceed with forfeiture.

After guilty verdict or plea, govt must prove by a preponderance of the evidence that the property was connected to defendant's crime.

If govt meets its burden, court enters preliminary order of forfeiture.

At sentencing, preliminary forfeiture order becomes final.

Criminal defendant

Third-party property owners

Criminal defendants may appeal to overturn a criminal forfeiture.

If any third parties (other than the defendant) have an interest in the property, they must wait until after the court has entered the forfeiture order to file a claim in an ancillary proceeding.

Third-party property owners must petition the court within 30 days of the final publication of the forfeiture order, or their receipt of the notice, whichever is earlier.

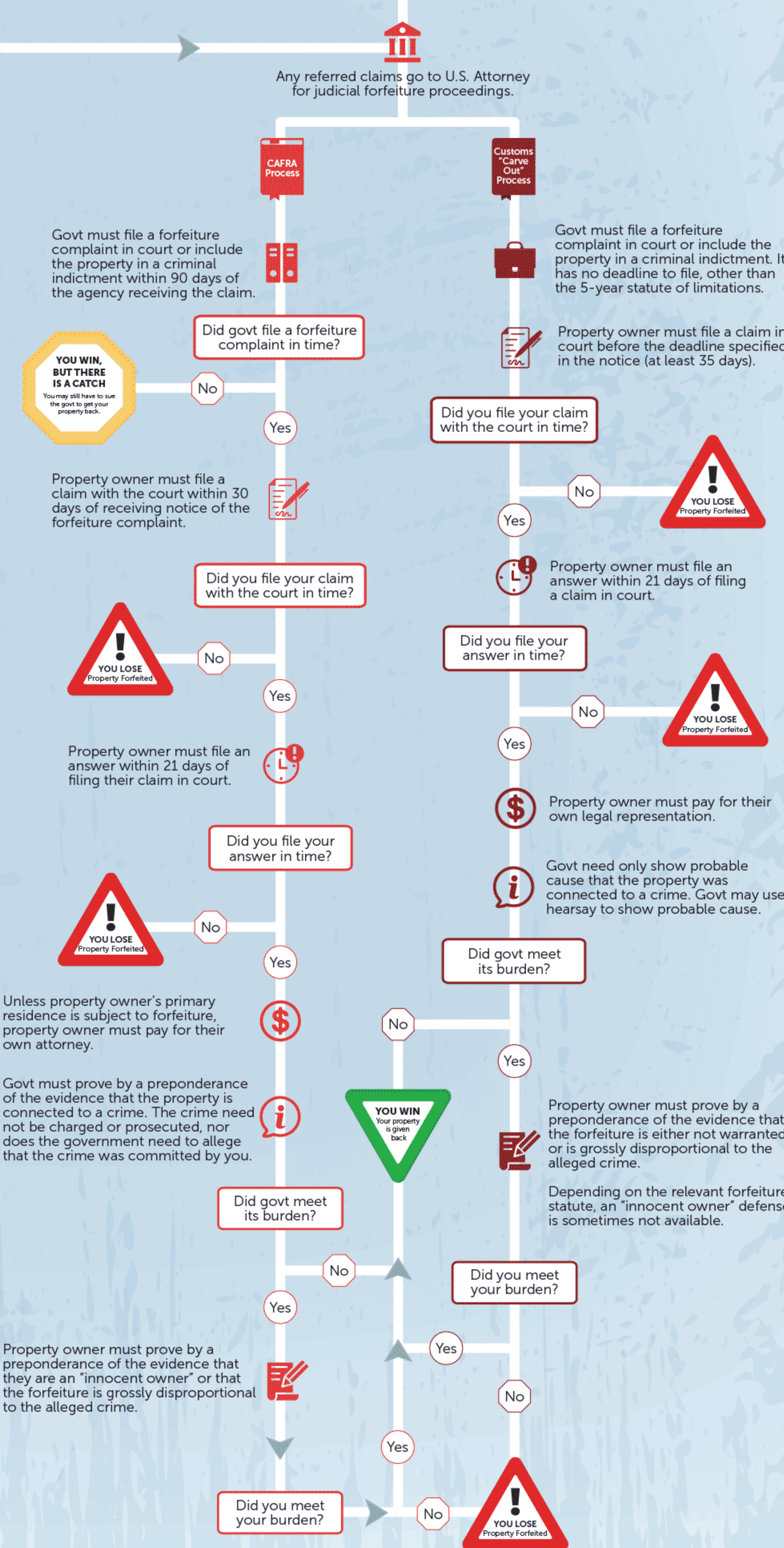
Third-party property owners must pay for their own legal representation and may conduct discovery, if court allows it.

Third-party property owners must show that they are the rightful owner of the property or a bona fide purchaser who didn't know it was subject to forfeiture.

If third-party property owner meets their burden, court will amend forfeiture order and order their property returned.

### (Civil) Judicial Forfeiture

A property owner can opt out of administrative forfeiture and have their case heard by a judge, but very few civil forfeiture cases make it to court.



Scan to learn more about civil forfeiture.