

FORFEITURE

SENATE JUDICIARY COMMITTEE

DECEMBER 18, 2020

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3 BIG PICTURE

- Agreement:
 - Crime should not pay
 - No one has right to fruit of crime
 - Legitimate for government to confiscate fruit and instruments of crime
- No one opposes forfeiture.
- Process questions about “How”

4 TOTAL: \$153 MILLION FROM 2000-2018

STATE SEIZURES

- Total: \$107 million
- Annual average: \$6 million

FEDERAL PAYMENTS

- Total: \$46 million
- Annual average: \$2 million

5 DEFINITION #1—SEIZURE VS. FORFEITURE

SEIZURE

- Police do seizures
- Take possession
- On streets

FORFEITURE

- Prosecutors do forfeitures
- Transfer title
- In court rooms and offices

6 DEFINITION #2—PROPERTY OWNERS

SUSPECT

- The person charged with a crime.

INNOCENT OWNERS

- A person who owns property used in a suspected crime but not charged:
 - Spouse
 - Parent
 - Creditor
 - Rent-a-car Company

7 DEFINITION #3—CIVIL VS CRIMINAL FORFEITURE

CIVIL FORFEITURE

- Two-track process:
 - Person prosecuted in criminal court;
 - Title to property litigated in civil court.

CRIMINAL FORFEITURE

- One-track process:
 - Person prosecuted in criminal court;
 - Title litigated in the same criminal court after conviction.

SB 308

SENATEVOTE	35-0-0	FEBRUARY 28, 2019
HOUSEVOTE	93-0-7	MARCH 13, 2019

9 SB 308—HYBRID CIVIL AND CRIMINAL FORFEITURE

KEPT CIVIL FORFEITURE

- Two-track process:
 - Person prosecuted in criminal court;
 - Title to property litigated in civil court.

CHANGED TIMING

- Postponed civil forfeiture litigation to after criminal conviction
 - **If property owner answered prosecutor's civil complaint**

10 COMMON NARRATIVE



II ARKANSAS FACTS

- Cash seized is small
 - Median seizure: \$1,051
 - 87% less than \$5,000



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12 IMPLICATION OF SMALL SIZE

- Most property owners do not answer prosecutor's complaint
- Default:
 - Won't trigger stay of civil forfeiture
 - Won't trigger conviction prerequisite
- Property owner may forfeit property even if acquitted in criminal court
- 77% of cases defaulted because property owners did not answer complaint
- Many reasons for default
- SB 308 negotiators could have addressed the small size issue.

13 SB 308

UNADDRESSED ISSUES

- Innocent owners
- Small size of seizure
- Better process than hybrid
 - End civil forfeiture
 - Replace it with criminal forfeiture
- Prompt post-seizure hearing
- Distribution of forfeited property
- Federal adoptions
- State/federal joint task forces

APPENDIX

Q&A

15 WHEN DOES CIVIL FORFEITURE MAKE SENSE?

ADMIRALTY LAW

- When the suspect is beyond outside the jurisdiction



16 BRITISH NAVIGATION ACTS OF THE MID-17TH CENTURY.

- Admiralty law
- King prosecuted ships and cargo.
- Owners beyond personal jurisdiction
- Practical necessities of enforcing admiralty, piracy and custom laws.



17 HISTORY OF FORFEITURE IN U.S.

- Admiralty law
- Customs Act of July 31, 1789
 - First use of forfeiture in U.S.
 - Owners beyond personal jurisdiction.



18 COMPREHENSIVE DRUG ABUSE PREVENTION & CONTROL ACT OF 1970

- 1978 Amendment to allow civil forfeiture
- 1984 Amendment:
 - Proceeds go to Forfeiture Funds of Justice Department and Treasury Department
 - For “forfeiture-related expenses and various law enforcement purposes.”



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