



Office of the  
Washington  
State Auditor  
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# PERFORMANCE AUDIT

## Report Highlights

# Civil Asset Forfeiture:

## Strengthening transparency and protections for property owners

Civil asset forfeiture is a legal tool that allows the government to seize property that law enforcement officers believe has been involved in or is the proceeds of a crime. The law allows officers to seize property without securing an arrest, charge or criminal conviction of the property owner. Technically, civil asset forfeiture is a lawsuit brought by the police agency against the property itself. In law, the inanimate object – be it car, cash or gun – is the defendant, which means the property owner is only an “interested party” to the suit and thus not provided an attorney in efforts to regain the seized items. When an interested party does not file a claim or does not prevail on a claim to regain their property, the law allows the police agency to retain or destroy the property.

The practice of civil asset forfeiture in Washington has raised concerns. For this audit’s review period – January 2020 through December 2022 – more than 100 of the state’s 250 police agencies reported receiving nearly \$40 million from local, state, and federal forfeitures. Legislators and other stakeholders expressed concerns about the lack of transparency regarding civil asset forfeiture activity, which they said limits the state’s ability to evaluate program effectiveness and inform policy. Additionally, legislators and other stakeholders expressed concerns that civil asset forfeiture may deprive people of their property without sufficient due process.

### **Civil asset forfeiture for the audited agencies typically involved property of low value and disproportionately affected some racial and ethnic groups**

Most audited agencies used civil asset forfeiture primarily to seize cash and other property associated with small-scale illegal activity. The property seized was often of relatively low value, due in part to the nature of common circumstances for seizure. Police agencies might also seize property of low

value because neither state law nor internal policies forbid doing so. In some communities, certain demographic groups faced civil asset forfeiture at significantly higher rates compared to their presence in the local population overall. Staff at audited agencies, experts and attorneys offered insights as to why forfeiture affects some groups more than others. The audit found that most people involved in a forfeiture with audited agencies were not convicted of a related crime.

## The state's civil asset forfeiture law gives police broad authority and few protections to property owners

Washington's low standard of evidence makes it easier for police to prevail in civil forfeiture cases. Owners must file a claim to regain seized property, which gives them an opportunity to present evidence concerning its innocence. State law allows the same police agency that seized property to decide the forfeiture case, an apparent conflict of interest. The audited police agencies made the final decision to forfeit property in most of the cases we reviewed. Property owners did not have their case decided by a court in any reviewed cases, even though this is an option in state law. Other states have addressed conflict of interest concerns by dissociating seizure from forfeiture decisions.

The audited agencies retained or disposed of most property automatically because no one filed a claim for its return. Defense attorneys offered many reasons why people might not file a claim. These include: reclaiming the property is not cost effective, owners did not receive notice of the forfeiture, and language barriers to understanding the notice, which can be compounded by the short window to file a claim. Required attendance at multiple hearings can also present barriers. Agency officials also offered potential reasons why people might not file a claim. They said people may not file a claim because they are reluctant to engage with the police or because they may be guilty of drug-related crimes.

As state law allows, police agencies retained 90 percent of the proceeds from forfeited property. Stakeholders have raised concerns that this practice creates a financial incentive for seizing property for forfeiture. Redirecting some or all funds to neutral accounts might address concerns around financial incentives. Some states have also taken steps to decrease police participation in the federal Equitable Sharing Program.

## Audited agencies followed requirements of state law, but could do more to help people receive notice and understand how to reclaim property

Agencies followed state laws around procedural due process for people involved in civil asset forfeitures. However, experts recommend additional practices to provide adequate civil protections to property owners, which only a few agencies had implemented. For example, some agencies did not use practices that help ensure property owners receive the forfeiture notice. Few agencies had implemented practices for their written notices that could help address problems of comprehension. Audited agencies also generally lacked staff guidance about ensuring notices are successfully delivered and easily understood.

## State law does not require police agencies to collect some key data on civil asset forfeiture nor make the data they do collect available online

Stakeholder concerns about transparency could be addressed by introducing reporting requirements to state law. Leading practices and examples from other states could offer Washington a path to greater transparency.

## State Auditor's Conclusions

Our public discourse often features one-dimensional views of complex issues like preventing crime and ensuring transparency and accountability in our system of law enforcement. This report, however, brings two of an auditor's most powerful tools, independence and fact-based analysis, to review our system of civil asset forfeiture.

We found that police agencies are following the law in seizing property suspected of being involved in a crime. We also found that Washington's civil asset forfeiture system disproportionately affects some groups, and does not include the same legal checks and balances found in other areas of our justice system.

For example, one of the goals of civil asset forfeiture is to disrupt large criminal organizations such as cartels. We found that most forfeiture cases involved small amounts of cash and low-value goods. In some communities, certain demographic groups faced civil asset forfeiture at significantly higher rates compared to their presence in the local population overall. And across the state, the law permits the same police agency that seized the property to determine whether there is sufficient evidence to retain that property.

I would emphasize the theme of transparency in our recommendations. They include such concrete steps as helping people better understand their right to challenge forfeiture by communicating in languages other than English. And we recommend the Legislature convene a workgroup to consider broader improvements to the system, such as establishing guidelines for statewide reporting of forfeiture activity.

I believe that we in Washington have demonstrated that government transparency can improve public programs without compromising those programs' goals. This audit shows that greater transparency, as well as other changes we have outlined, can help our state continue to disrupt wrongdoing by seizing the material elements of crime, while also protecting every Washingtonian's right to due process.

## Recommendations

We made recommendations to the audited police agencies to help improve the chances that people receive notice of the police's intent to forfeit their property and understand what they can do to reclaim the property. We also recommended the Legislature convene a workgroup that will address issues with civil asset forfeiture in Washington. Topics for the workgroup to examine include: the conflict of interest apparent in civil asset forfeiture decisions, the potential financial incentive in pursuing forfeitures, the lack of transparency about civil asset forfeiture activity, and ways to increase safeguards for property owners facing civil asset forfeiture.