



CIVIL ASSET FORFEITURE LAWS

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Recent federal policy changes have increased public awareness of asset forfeiture, a process through which a law enforcement agency can seize property that may have been involved in a criminal action. This *issue brief* summarizes Colorado and federal civil asset forfeiture laws, including a summary of recent proposed changes to Colorado law.¹

Colorado Forfeiture Law

The primary Colorado civil asset forfeiture law, the Colorado Public Nuisance Abatement Act, addresses the confiscation and forfeiture of property.² Forfeiture is a civil action undertaken in combination with a criminal prosecution in Colorado. Generally, Colorado law requires a conviction prior to a forfeiture judgment by the court, so a district court will suspend civil forfeiture proceedings related to a case until a criminal conviction is obtained.³ In the event of a criminal conviction, prosecutors act as the plaintiffs in the forfeiture action, and the district court maintains jurisdiction over the proceedings. Colorado law requires the plaintiff to prove by clear and convincing evidence that the property, real or personal, constitutes the proceeds or instrumentality of an illegal act and

that the owner was involved in, knew, or should have known of, the illegal act.

Seizable property. Under Colorado law, law enforcement officials may seize: any buildings, real and personal property, currency, and other things of value used in conjunction with any public nuisance act; all proceeds traceable to a public nuisance act; or currency used or intended to be used to facilitate any public nuisance act. Public nuisance acts include crimes related to: prostitution and exploitation of children; human trafficking; illegal gambling; controlled substances; and theft. They also include certain traffic crimes, assaults, and crimes against the elderly, as well as any felony not included in this section of statute.⁴

Limitations on revenue. Under Colorado law, generation of revenue may not be the primary purpose of asset forfeiture.⁵ If any profits from asset forfeiture remain after distribution to specified stakeholders, 50 percent of the remaining money goes to the agency involved in the seizure, and 50 percent goes to the Department of Human Services for mental health and substance abuse services.⁶ Due to this policy, most civil asset forfeiture in Colorado occurs under federal law. Under

¹This issue brief specifically covers *civil* asset forfeiture, which is an action against property, and does not discuss *criminal* asset forfeiture, which is an action brought as a part of the criminal prosecution of a defendant.

²Section 16-13-301, *et seq.*, C.R.S.

³Exemptions from the criminal conviction requirement are listed in Section 16-13-307 (1.7), C.R.S.

⁴Section 16-13-303, C.R.S.

⁵Section 16-13-302 (2)(a), C.R.S.

⁶Section 16-13-311 (3), C.R.S. Stakeholders include those owed under any liens on the property perfected prior to the seizure, innocent partial property owners, the seizing law enforcement agency for reasonable costs, the district attorney for reasonable costs, and the clerk of the court for administrative costs.

federal law, federal agencies can adopt the case and share the profits with local law enforcement through the federal equitable sharing program, discussed below.

Reporting requirements. Colorado law requires district attorneys to file an annual report with the Department of Local Affairs detailing: the property subject to forfeiture actions; the criminal charges filed against the property owner; the disposition of the criminal and forfeiture actions, including the value of the property involved; and information relating to forfeited property delivered to, or received from, the federal government.⁷

Property seized in 2015. According to filed reports, the majority of Colorado civil asset forfeiture in 2015 across all jurisdictions involved drug-related crimes.⁸ The types of property seized varied by judicial district. For example, a majority of the property seized in the Fourth Judicial District was currency and bank assets, while the First Judicial District primarily seized cars and currency.

Recent proposed legislation. Introduced during the 2015 legislative session, Senate Bill 15-006 would have prohibited certain forfeiture actions without a conviction unless agreed upon by all parties, provided certain judicial processes to determine the validity of a seizure, and prohibited law enforcement agencies in Colorado from participating in a federal forfeiture action unless the value of property was greater than \$50,000. This bill was postponed indefinitely by the Senate Judiciary Committee.

Senate Bill 17-136, which concerns reporting and limiting civil asset forfeiture, is currently pending before the General Assembly.

Federal Forfeiture Law

Federal civil asset forfeiture is an action brought against the property itself in court and

⁷Section 16-13-701, C.R.S.

⁸In 2015, reports were filed from the first, second, fourth, eighth, tenth, and twentieth judicial districts.

does not require a criminal conviction. Under federal law, the plaintiff must prove by a preponderance of the evidence that the property was used or derived from an illegal act. Federal agencies may seize assets under federal law, through a joint investigation with state or local officials, or by adopting state or local forfeitures.

Seizable property. Federal law enforcement agencies may seize any real or personal property involved with, or proceeds traceable to certain federal law violations. Examples of crimes where involved property is subject to civil forfeiture include: money laundering; drug trafficking; corruption; certain fraud and counterfeiting; racketeering activities; dealing in stolen vehicles; and offenses relating to terrorism.⁹

Equitable sharing. Many Colorado law enforcement and district attorney's offices participate in the Equitable Sharing Program through the U.S. Department of Justice (DOJ).¹⁰ Under this program, participants work with federal agencies on joint investigations and receive a share of the asset forfeiture based on their contribution. Additionally, if applicable under federal minimum adoption thresholds, state and local participants may allow federal agencies to adopt their asset forfeiture cases. Once adopted, the local or state participant can receive up to 80 percent of the asset forfeiture profit based on its participation. State and local agencies then use this profit for specific purposes as outlined in the program guidelines, usually for training or equipment replacement.

According to the DOJ, in federal FY 2016, 28 Colorado agency participants held assets worth a cash value of \$2,906,285 and sale proceeds of \$204,485.¹¹

⁹18 U.S.C. § 981.

¹⁰18 U.S.C. § 981; 19 U.S.C. § 1616a; 21 U.S.C. § 881 (e).

¹¹Federal FY 2016 ended September 30, 2016. The DOJ only made payments during approximately nine months of FY 2016 because it deferred equitable sharing payments to state and local law enforcement agencies between December 21, 2015, and March 28, 2016, in order to absorb budget cuts enacted by Congress. In FY 2015, when DOJ made payments for the entire year, 42 Colorado agency participants held assets worth a cash value of \$4,357,254 and sale proceeds of \$708,897.