



CIVIL ASSET FORFEITURE

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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. While federal policy affects federal seizures in the state, Colorado law governs how state and local agencies participate in seizure actions. This *issue brief* summarizes Colorado and federal civil asset forfeiture laws.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 was used to carry out, or constitutes the proceeds of, an illegal act. The plaintiff must also prove that the property owner was involved in, knew, or should have known of, the illegal act.

Seizable property. Under Colorado law, law enforcement agencies 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 specifically included in the public nuisance statutes.⁴ According to reports filed by Colorado law enforcement, the majority of forfeited property, such as cars, bank assets, and currency, was involved in drug-related crimes.

Limitations on revenue. Under Colorado law, the 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 in the seizing agency's judicial district.⁶ Due to this policy, most civil asset forfeiture in Colorado has occurred under federal law which allows federal

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 against a defendant as a part of a criminal prosecution.

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.

agencies to adopt the case and share the profits with local law enforcement through the federal Equitable Sharing Program, discussed below.

Reporting requirements. Legislation passed in 2017 added reporting requirements for state and local agencies utilizing civil asset forfeiture. Seizing agencies, such as law enforcement, multijurisdictional task forces, and district attorneys' offices, are required to biannually report whether they received any state or federal forfeiture proceeds. The first seizing agency reports are due June 1, 2018. Agencies that fail to report face a \$500 fine, with a possibility of paying a civil fine of an amount equal to 50 percent of the forfeiture proceeds received by the agency during the reporting period.

The Department of Local Affairs (DOLA) must maintain a searchable, public database with all reported information including, but not limited to: the seizing agencies involved; the date and place of the seizure; the property seized; information related to the forfeiture proceedings; criminal charges filed; the total amount and use of forfeiture proceeds expended; and the total value of seized property held at the end of a reporting period.⁷ In addition to hosting a database, DOLA must also provide an annual report to the Governor, Attorney General, and General Assembly of the number of forfeiture actions by each seizing agency, total number of federal forfeiture actions, the type of assets seized and their net proceeds, and the proceeds' recipients and total amounts each recipient has received.

Federal Forfeiture Law

Federal civil asset forfeiture is an action brought against the property itself in court and does not require a criminal conviction. Under federal law, the plaintiff must prove by a preponderance of the evidence (a lesser standard than state law) 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 cases.

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.⁸

Equitable Sharing Program. Federal agencies may seize property as part of a joint investigation undertaken with state and local agencies. Additionally, state or local agencies may request that a federal agency take assets it has seized without federal involvement into federal custody and begin forfeiture proceedings under federal law, a process called "adoption." Federal agencies may adopt state and local seizures if the value of the seized property meets federal minimum adoption thresholds, and the criminal conduct related to the seizure violates federal law. Under the Equitable Sharing Program administered by the U.S. Department of Justice (DOJ), once property is seized or adopted by federal law enforcement, a state or local agency can receive up to 80 percent of the asset forfeiture profit based on its participation in the investigation that led to the seizure.⁹ State and local agencies then use this profit for specific purposes as outlined in the program guidelines, usually for training or equipment replacement.

Colorado law limits law enforcement participation in federal equitable sharing. State and local agencies can *only share* in the proceeds if the net equity value of the seizure is greater than \$50,000 and the seizure relates to a filed criminal case.

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 \$204,485.¹⁰

⁸18 U.S.C. § 981.

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

¹⁰Federal FY 2016 ended September 30, 2016.

⁷Section 16-13-701, C.R.S.