

Take action to protect citizens' property rights by reforming Illinois' grossly unjust civil asset forfeiture laws

- ▶ **Under current Illinois law, a person need not be convicted of any crime—or even arrested or charged—in order to be permanently deprived of their cash, car, or even their home.**
- ▶ **Once your property is seized, the burden of proof is essentially on YOU to prove that your property should NOT be permanently forfeited to the State.**
- ▶ **A person wishing to contest the forfeiture of their property must pay for the privilege, and has no right to appointed counsel.**

In many cases, the State must attain only the **lowest standard of proof** (probable cause) in order to forfeit property,¹ and the property owner must often overcome additional statutory presumptions that favor the State in order to avert the forfeiture. Whether or not the owner of seized property is ever charged with a crime, he or she has no right to appointed counsel in a forfeiture proceeding. Furthermore, individuals who face seizure and forfeiture of their property are frequently poor and cannot afford private legal representation.

With the exception of real estate or property worth more than \$150,000, **an Illinois property owner must pay a bond worth 10% of the value of the property just for the opportunity to challenge the forfeiture.** If the owner loses the case, they must give up the entire bond and pay the full cost of the forfeiture proceedings; but **even if they win, they must relinquish 10 percent of the bond.**² No other state places property owners at such a gross disadvantage.

Civil asset forfeiture inflicts serious economic harm upon Illinoisans.

The State of Illinois consistently forfeits \$20 million or more of its residents' property on an annual basis. In 2013, the number was over \$27 million.³ This does not even include the millions of dollars of property forfeited annually by the federal government.

Asset forfeiture, especially of a person's vehicle, can cause a cascade of negative consequences in a person's life, including the inability to maintain employment or even to attend court proceedings to try to reclaim the seized property. **This practice exacerbates impoverishment and harms the property owner's innocent children and family members.**

Illinois' civil asset forfeiture laws incentivize "policing for profit."

Current law gives the police a strong incentive to seize more and more property, because **Illinois law enforcement agencies reap almost all of the proceeds from asset forfeitures.** Police departments also receive millions of dollars annually from the proceeds of property seized from citizens by the federal government, through a practice called "equitable sharing."

Civil asset forfeiture lacks transparency to Illinois lawmakers and taxpayers.

Illinois government agencies generally receive their funding through the appropriations process, with one glaring exception: **Law enforcement agencies are authorized by law to pad their own budgets with forfeiture proceeds,** bypassing transparency or accountability to the elected legislators who hold the power of the purse under the Constitution. Furthermore, seizing agencies in Illinois are required to report only very basic information about each incident to the State's Attorney. **Data on seizures, forfeitures, and law enforcement's use of forfeiture proceeds is not aggregated or made publicly available.** Taxpayers must file a request under the Freedom of Information Act in order to receive any information at all about forfeiture activity.

¹ 725 ILCS 150/9(G)

² 725 ILCS 150/6

³ Sources: Illinois State Police response to the ACLU of Illinois' December 2015 FOIA request; Institute for Justice *Policing for Profit* report, 2nd edition (2015)

Illinois forfeiture statutes are in disarray and in need of a rewrite.

There are currently at least 25 different laws scattered throughout the Illinois Compiled Statutes which authorize some form of asset forfeiture.⁴ Among all these disparate provisions of law, there is little consistency as to the standards and procedures for forfeiting property once it has been seized. Some forfeiture provisions require a property owner to be found guilty of an offense, while others do not. Different standards of proof, exemptions, and sets of procedures may obtain in asset forfeiture proceedings, depending upon which statute or statutes apply (although under none of these laws is the State required to meet a standard of proof greater than preponderance of the evidence).

There is momentum to reform the practice of civil asset forfeiture.

The abuse of civil asset forfeiture has recently garnered national attention and media scrutiny. In 2015, Michigan enacted legislation raising the State's burden of proof in forfeiture cases from "preponderance of the evidence" to "clear and convincing evidence" that property is connected to a crime, and requiring law enforcement to report information about forfeitures more transparently. The State of New Mexico recently eliminated civil asset forfeiture altogether, passing a law requiring a criminal conviction before a person's property can be permanently forfeited to the government, and requiring forfeited funds to be deposited in the State's general fund, rather than directly to law enforcement agencies, in order to reduce incentives to seize property wrongfully.

Illinois, which received a "D minus" grade in the Institute for Justice's recent report reviewing state forfeiture laws, should follow the examples of other states and overhaul its asset forfeiture laws with the objective of ensuring that:

- **A criminal conviction should be required before a person can be permanently deprived of their property through forfeiture;**
- **The State should be required to prove by clear and convincing evidence that property is in fact related to criminal activity before that property can be forfeited;**
- **Police and prosecutors should not be financially incentivized to seize and forfeit citizens' property; and**
- **Information detailing the government's seizure and forfeiture of citizens' assets and its use of the proceeds should be transparent and easily accessible to lawmakers and taxpayers.**

For more information contact: Benjamin G. Ruddell: 773.750.6459 • bruddell@aclu-il.org / Mary Dixon: 815.483.1990 • mdixon@aclu-il.org



⁴ Elected Officials Misconduct Forfeiture Act (5 ILCS 282/); Public Corruption Profit Forfeiture Act (5 ILCS 283/); Timber Buyers Licensing Act (225 ILCS 735/16); Forest Products Transportation Act (225 ILCS 740/14); Illinois Public Aid Code (305 ILCS 5/8A-7); Illinois Food, Drug and Cosmetic Act (410 ILCS 620/3.23); Environmental Protection Act (415 ILCS 5/44.1); Wildlife Code (520 ILCS 5/1.25); Fish and Aquatic Life Code (515 ILCS 5/1-215); Herptiles-Herps Act (510 ILCS 68/105-55); Illinois Endangered Species Protection Act (520 ILCS 10/8); Criminal Code of 2012: Financial institution fraud (720 ILCS 5/17-10.6); Gambling (720 ILCS 5/28-5); Money laundering (720 ILCS 5/29B-1); Illinois Streetgang and Racketeer Influenced and Corrupt Organizations Law (720 ILCS 5/33G-6); Article 36 Seizure and Forfeiture of Vessels, Vehicles and Aircraft (720 ILCS 5/36-1 et seq.); Dumping garbage on real property (720 ILCS 5/47-15); Cannabis Control Act (720 ILCS 550/9; 720 ILCS 550/12); Illinois Controlled Substances Act (720 ILCS 570/405; 720 ILCS 570/405.2; 720 ILCS 570/505); Drug Paraphernalia Control Act (720 ILCS 600/5); Methamphetamine Control and Community Protection Act (720 ILCS 646/65; 720 ILCS 646/85); Code of Criminal Procedure: 725 ILCS 5/124B; Drug Asset Forfeiture Procedure Act (725 ILCS 150/); Narcotics Profit Forfeiture Act (725 ILCS 175/5); Illinois Securities Law of 1953 (815 ILCS 5/11)