



Guilty Money

Civil Asset Forfeiture in Nebraska



October 2015



EXECUTIVE SUMMARY

Police abuse of civil asset forfeiture laws has shaken our nation's conscience. Civil forfeiture allows police to seize — and then keep or sell — any property they suspect may be involved in a crime. Owners need not ever be arrested or convicted of a crime for their cash, cars, or even real estate to be taken away permanently by the government.

The ACLU does not believe that all instances or uses of civil forfeiture are inherently wrong. In our research, we reviewed many court cases in which the forfeited property was found alongside drugs and the owner was ultimately convicted of a felony. In these cases, civil forfeiture operated according to plan — those dealing and smuggling drugs lost their money. However, an unacceptable number of cases involved everyday people who became entangled in an unfair system and who lost their personal property and assets even after there was no finding of wrongdoing or criminal activity. Reasonable civil forfeiture reform should allow law enforcement to seize money that is unquestionably a part of illegal activity while also allowing everyone to safely travel with cash without having to fear losing it to law enforcement.

Civil asset forfeiture reform is an emerging public policy issue due to recent well-publicized incidents indicating abuse of the process and the real life impact on everyday people in Nebraska. This issue is one that has found broad bipartisan support across the political spectrum and the same should hold true in the great state of Nebraska.¹

We believe the current landscape for civil asset forfeiture laws can lead to abuse and that too many innocent people are being caught up in forfeiture seizures. We examined personal anecdotes from forfeiture victims and data from government, law enforcement, and non-profit organizations and we found many troubling trends and practices. Our research has also identified several promising policy reform solutions tested in other jurisdictions that could be beneficial for consideration in Nebraska.

Amy Miller, ACLU of Nebraska Legal Director
Jackson C. Blais, ACLU of Nebraska intern

Acknowledgments Cover photo: Robert Couse-Baker; Cover money photo: Tracy Olson; Page 4 money photo: 401kcalculator.org

2 | Guilty Money: Civil Asset Forfeiture in Nebraska

CIVIL FORFEITURE: A LEGAL OVERVIEW

Civil forfeiture has its roots in the 1980's War on Drugs though it can be traced back further to British admiralty law in the 1600's. In essence, civil forfeiture was designed to take drug money away from high-level drug lords and to cripple their operations by restricting their access to revenue from ill-gotten gains. The government may seize any property used in relation to criminal activity—cars, real estate or any other possessions. Over time, it has devolved from targeting drug kingpins to increasing instances of everyday citizens with relatively small amounts of money being entangled in a complicated legal structure. The system has also led to well-publicized abuses where forfeited funds have been misappropriated for highly suspect purchases such as “a vacation to Hawaii, or a margarita machine.”²

How Civil Forfeitures Work Under the Federal System

Mark Brewer's case (see sidebar) typifies many of the absurdities that exist within the realm of civil forfeiture. First, property – not an individual – is put on trial. Typical civil forfeiture cases involve money, but the government has used this system to seize a wide range of unusual property such as:

- *South Dakota v. Fifteen Impounded Cats*³
- *United States v. Approximately 64,695 Pounds of Shark Fins*⁴
- *United States v. Article Consisting of 50,000 Cardboard Boxes More or Less, Each Containing One Pair of Clacker Balls*⁵

In a civil forfeiture case, a property owner is not entitled to a court-appointed attorney.⁶ Instead, property owners must pay for their own attorneys. If they cannot afford one, they must go it alone as there are no public defenders or appointed attorneys for these kinds of cases. The burden of proof is turned on its head from a typical judicial proceeding and the property is presumed guilty until proven innocent. If the claimant is unable to prove that the money or

property is “innocent,” the government retains the money or property and distributes the assets to the law enforcement agency responsible for the seizure.

The federal government's standard for law enforcement to initially seize property is only whether there is probable cause to believe the property was used in a crime. Under this low standard the government must only allege evidence that the property or money was used for illegal activity to confiscate the property. In order to ultimately win their case and permanently keep the seized property, the government need only prove there is a 51% likelihood that the property was used in connection with an illegal activity. Nebraska law enforcement may then

Nebraska v. Down Payment on a Home

*Mark Brewer, disabled Air Force veteran
\$63,530 – never returned*

Mark Brewer, a disabled Air Force veteran traveling to California to purchase a new home, was pulled over in Nebraska in November of 2011 after changing lanes without signaling on I-80. Douglas County Sheriff Deputy Dave Wintle claimed to smell marijuana and searched the car. He found two backpacks containing \$63,530 in cash. Brewer had no past criminal record and no drugs in his car yet Deputy Wintle seized the money, claiming that because a drug dog had alerted to drug residue on the money, it was subject to forfeiture. Brewer asserted the money was saved from his military service and disability payments and was intended as a down payment on his new home. Brewer took his case to federal court and lost because the judge found that the government had met “its burden of proving a substantial connection between seized currency and drug activity.” Brewer was never charged with a crime—not even a traffic violation—yet he lost his \$63,530 to civil forfeiture.

United States v \$63,530 in United States Currency, 781 F.3d 949 (8th Cir. 2015).

You and your money are treated differently under federal civil forfeiture practices.



Presumed Innocent	Presumed Guilty
Must be proven guilty beyond a reasonable doubt	Lower burden of proof
Right to an attorney	Must pay for attorney
Right to post bond during proceedings	Property cannot be accessed until proven innocent
Not jailed until proven guilty	Not free until proven innocent

start state court proceedings (discussed below) or may turn over the property to federal authorities. When state or county law enforcement opts to give the property to the federal government for proceedings, it is called a federal “adoption.”⁷ The property is then governed under federal law, rather than state law. The federal government has set up equitable sharing agreements with states, agreeing to split the money from forfeitures between the local law enforcement and the federal government. Local law enforcement typically receives 75-80% of the financial proceedings that the federal government has ‘won’ from the property owners.⁸ The federal guidelines demand that equitable sharing money must benefit local law enforcement and cannot serve any other purpose.⁹ This means law enforcement cannot give the equitable sharing money to the city council, public schools or any

other entity that does not directly benefit the law enforcement unit.

In January of 2015, Attorney General Eric Holder announced that effective immediately, the majority of equitable sharing programs between state and federal governments would end. While viewed as a positive step towards ending forfeiture abuse there are still doubts as to how effective this change will be. The Office of the Attorney General declared that “federal adoption of property seized by state or local law enforcement under state law is prohibited,” save for property that presents public safety issues.¹⁰ Despite this promising development there is uncertainty about the actual scope and impact of this initiative. Initial research indicates that in practice little has actually changed and that Nebraska civil forfeiture cases are still being tried under federal jurisdiction at similar rates today as they were prior to the Attorney General’s announcement. Moreover, the change announced by Attorney General Holder was

essentially a policy change in prosecutorial discretion and no substantive changes were made to the underlying federal laws that govern the civil forfeiture process. A future Attorney General could easily return to old practices regarding equitable sharing arrangements that foster potential abuse.

How Civil Forfeitures Work Under Nebraska Law

Civil forfeiture law wildly varies from state to state, as well as from state to federal standards. When innocent owners face a civil forfeiture proceeding in state court, they have the right to hire an attorney to assist them—but they have no right to a free court appointed attorney. And while state law suggests there may be the option of allowing the owner to retain their property

during the court proceedings, that relief is rarely if ever granted by judges.¹¹

Under Nebraska law, law enforcement can permanently forfeit property only if they can prove beyond a reasonable doubt that said property was used for illegal purposes.¹² “Beyond a reasonable doubt” is the highest standard in American courts--the same standard that must be met to convict someone of a crime. The property owner may go to court to show that the property was not used for illicit activity. If the owner is unable to do so, the state lawfully seizes the property. Nebraska law designates 50% of the proceeds from the seized assets to fund Nebraska’s public education system and the other 50% are directed to anti-drug efforts by local law enforcement.¹³

Amongst all state civil forfeiture laws only Nebraska, North Carolina, and Wisconsin require state law enforcement to meet the highest standard of proof. This demonstrates Nebraska’s commitment to policies with prudent safeguards to prevent misuse or abuse. However, our research indicates that significant amounts of money have been seized through the state system from people who have never been charged with a crime, which prompts the need for further review and analysis.

There is no uniform reporting that permits a comprehensive figure for forfeitures under our state court system, but since 2011 well over \$3,000,000 has been received by local agencies.¹⁴

How Federal and State Law Work Together

The federal government’s system provides a direct financial incentive for local law enforcement to seize more property and Nebraska law enforcement significantly benefits from every seizure. When Attorney General Holder made the announcement ending many equitable sharing programs nationwide, Douglas County Sheriff Tim Dunning was one of the most vocal critics. He said, “Federal law is a tremendously bigger hammer. I don’t see what hammer we are going to have over these people now.”¹⁵ He went on to admit it was “much more difficult to seize money and property under Nebraska law,” which is why Nebraska needed the equitable

Nebraska v. Church Donations

Pastor Marco Silva

\$14,000 – returned after ACLU intervention

On March 17th, 2013, Pastor Marco Silva was driving along the interstate with his fiancée on their way to a church event. Pastor Silva is a 53-year-old citizen of Peru who is legally present in the United States. He is a Pentecostal minister who tours Spanish-language churches with a presentation about an orphanage in Peru. Pastor Silva collects donations in cash, checks and credit cards. He was stopped by Seward County Sheriff deputies, purportedly for “failure to signal lane change,” but he never received a citation for any traffic violation.

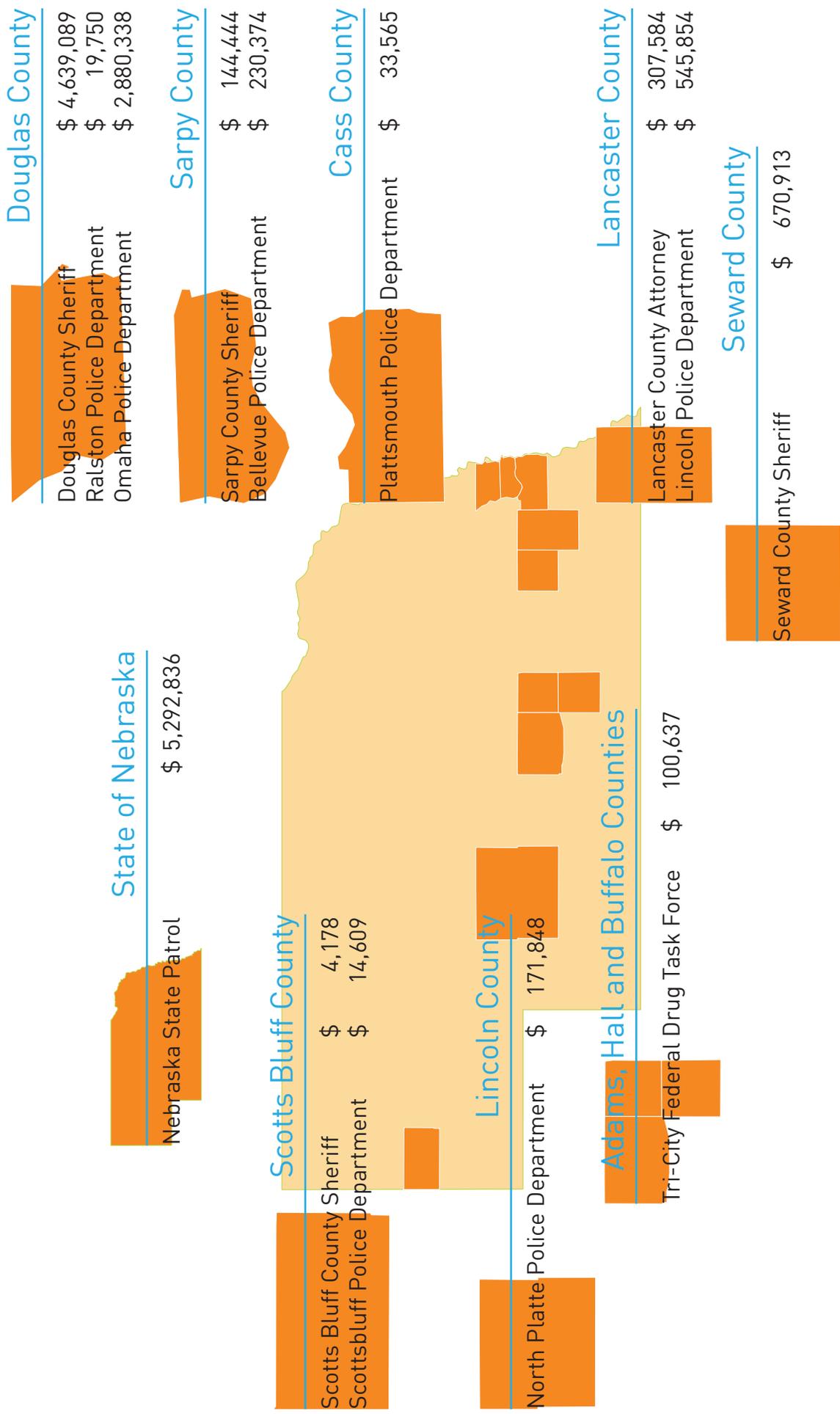
Deputies asked Pastor Silva’s permission to search the car, which he willingly gave. When deputies discovered he had \$4,000 in cash and another \$10,000 in checks and credit card receipts, they began pressing him for answers about the source of the money. They insisted he must be involved in drugs or human trafficking but he continued to explain he was a minister and offered to show them his short film on the orphanage. Pastor Silva and his fiancé were placed under arrest and brought to the jail in Seward.

At the jail, the couple was fingerprinted and photographed, but were never placed into a jail cell. Police performed a background check but nothing was found, because as Marco notes, “we are godly people.” After approximately 4 hours from the initial traffic stop, the couple was released though Seward County kept the cash and the credit card machine. The couple had to proceed to the next scheduled sermon without a dollar between them, and ended up staying over in Nebraska for several extra days to try to hire an attorney.

After the ACLU of Nebraska intervened, Seward County returned the Pastor’s money and property. But the vast majority of people are not lucky enough to receive their money back.

Top Earners

A handful of Nebraska agencies receive almost \$15 million through federal sharing agreements. In total, Nebraska received \$16,142,595 from 2010 - 2014. Most of these counties are in the I-80 corridor.



sharing with federal authorities.¹⁶ **Nebraska is the fifth largest recipient per capita from equitable sharing agreements with the federal government.**¹⁷

From 2004 to 2014, Nebraska law enforcement received \$42,623,781 from the federal government through civil forfeiture.¹⁸ An overwhelming amount of this money was sent to county and city law enforcement located on I-80 because of their proximity to this roadway, which is considered an avenue for drug trafficking.

While we acknowledge that criminals engaged in drug trafficking may comprise a portion of the seizures, our research illuminated some very troubling instances where everyday people visiting Nebraska suffered a tremendous impact to their personal property rights and civil liberties, which prompts the need for further review and analysis.

Drug Dog Sniffs of Currency

Many of the stories of civil forfeiture abuse involve use of a drug dog following a traffic stop. This does not constitute a search under US Supreme Court rulings, since the dog is simply doing a ‘free smell’ of the air around the vehicle. But once the dog alerts, the police officer has the authority to lawfully search the vehicle without a warrant.

Dogs are capable of sensing even the residue of drugs on currency, which might seem to present concrete evidence that the money was involved in drug activity. However, there are multiple scientific studies that question the accuracy of drug dog sniffs – both in identifying drug residue and in concluding that the money was used in conjunction with illegal drugs. One recent study found that up to 90% of circulating United States currency has an identifiable amount of drug residue.¹⁹ The Drug Enforcement Agency admitted as early as 1987 that they estimate as much as 97% of paper currency is contaminated by drug residue—one “innocent” bill will come up against a “guilty” bill at a bank and transfer drug residue.²⁰ Any sizable amount of money is likely to cause a drug dog to alert—and that means a drug dog alert has no true bearing on whether the owner of the money is guilty of drug activity.

Policing for Profit: The Frequent End Result of Civil Forfeiture

Policing for Profit is a concept that is gaining widespread understanding among advocates, policymakers, the public, and the media in recent years. Many advocates are concerned that with federal equitable sharing agreements in place local law enforcement have found a new source of income. These agreements may

Nebraska v. Cash for Business’ New Truck

Emiliano Gonzolez

\$124,700 – never returned

On May 28, 2003, Emiliano Gonzolez was driving home to California from Chicago when he was pulled over in Nebraska. He had gone to Chicago in order to purchase a refrigerated truck for his produce business, but the truck had been sold by the time he arrived in Chicago. During the police stop, his car was subjected to a drug dog sniff and the canine alerted to a cooler in the back of Gonzolez’s rental car. The officer found \$124,700, but no drugs or contraband. The cash was money Gonzolez had obtained by pooling with his father-in-law and friends to buy the truck. However, the officer claimed that the money had been used in an illegal drug trade and seized the money based on nothing more than the assumption that a lot of cash was suspicious. When Gonzolez fought the government, the federal appeals court ruled that the “bundling and concealment of large amounts of currency... supports a connection between money and drug trafficking” and ruled against Gonzolez. Even though Gonzolez’s friends and father-in-law all testified that they had contributed money to purchase a truck, and even though there was nothing illegal found in Gonzolez’s car, Gonzolez lost all of his money. *United States v. \$124,700 in United States Currency*, 458 F.3d 822 (8th Cir. 2006). See also Lori Pilger, “Cashing in: The fight over 12 cars, \$3.9 million seized in I-80 stops,” *Lincoln Journal Star*, May 10, 2010 http://journalstar.com/news/local/crime-and-courts/cashing-in-the-fight-over-cars-million-seized-in-i/article_00b97f70-5a20-11df-86f4-001cc4c002e0.html

provide a direct incentive for police to cast their nets wider to pull over more vehicles and conduct more searches in order to seize more money and property. For example, Sheriff Tim Dunning of Douglas County claimed that \$4.2 million dollars of seized assets, funds exclusively “confiscated from Drug Dealers,” were used to expand Douglas County’s K9 Unit.²¹ To put it another way, Douglas County uses drug dog sniffs to locate cash, they seize the cash, and then they use the seized money to purchase more drug dogs. Aside from the Nebraska State Patrol, Douglas County law enforcement receives the most equitable sharing money from the federal government. In 2011 alone, they received \$1.4 million (and over the past five years, received over \$4.6 million) in forfeited funds.²² The agency’s budget has, in part, become dependent on the assumption they will continue to locate and seize cash from drivers. This raises the specter that Douglas County law enforcement has a direct financial motive to increase forfeiture activities, prompting the need for further review and analysis of this relationship which may present a conflict of interest.

Nebraska v. cash to start a new life

John Nelson

\$48,100 – returned after a five-year legal battle

John Nelson and his two dogs were driving through Nebraska from Denver, Colorado back home to Wisconsin in his family’s RV. Nelson had planned to move to Denver but when he arrived he learned that Denver prohibited the ownership of pit bulls. Since one of Nelson’s dogs was a pit bull, he had no choice but to go back home with his life savings. He was pulled over and questioned by police. He admitted to possessing a personal use amount of marijuana and was ticketed. He was charged with an infraction, which is even less serious than a misdemeanor. The police officer then informed him that since Nelson had illegal drugs he had a legal obligation to search Nelson’s RV. Upon searching the vehicle, Nelson’s money, \$48,100, was seized. The police officer reasoned that the money was from a drug deal that had been planned in Colorado that did not occur, though there was no evidence of that beyond the officer’s assumptions. A drug dog sniff indicated the presence of drug residue on Nelson’s money. (As described on page 7, up to 90% of US currency has cocaine residue on it, making Nelson no more likely to be a drug dealer than 90% of Americans.)

The officer cited Nelson’s nervousness as more evidence that Nelson was involved in illegal drug activity. Nelson in fact has an anxiety disorder and was on prescription medication.

Nelson’s parents confirmed that they had given him the family RV to drive to Colorado in order to house his dogs and to avoid paying for hotels. They also verified that the money had come from selling bonds from his grandmother. Additionally, Nelson’s father had given him an extra \$4,000 in case John ran into financial trouble. Nelson fought the forfeiture and eventually won. But during the five-year legal battle Nelson was without his life savings and even when he won the return of his money he was not entitled to interest or damages.

United States vs. \$48,100 in United States Currency, 756 F.3d 650 (8th Cir. 2014).

Bruce Vielmetti, “Cedarburg Man Wins Back Money Seized from RV Years Ago in Nebraska,” Milwaukee Wisconsin Journal Sentinel, June 29, 2014, <http://www.jsonline.com/news/crime/cedarburg-man-wins-back-money-seized-from-rv-years-ago-in-nebraska-b99300603z1-265118961.html>

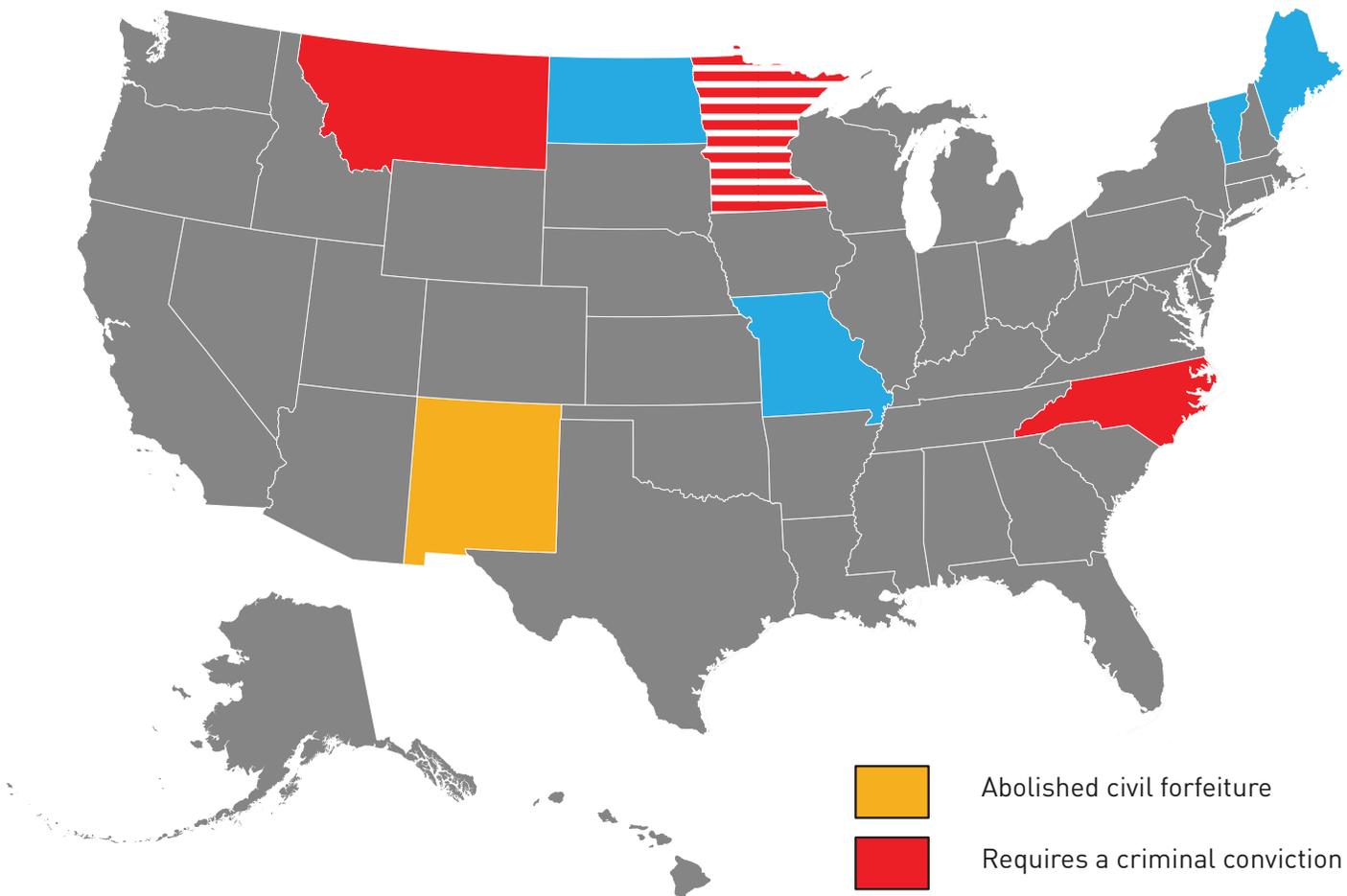
SOLUTIONS AND MODELS FOR POLICY REFORM

Some states have already implemented a variety of civil forfeiture reforms, from abolishing the practice altogether to increased transparency.²³ Each of the four options identified below holds the potential to help curb potential abuse of civil forfeiture and is worthy of consideration by Nebraska policymakers. While we include information about abolishing civil forfeiture as an option, we reiterate that the ACLU does not believe that all instances of civil forfeiture are wrong and a misuse of law enforcement power.

Abolish Civil Forfeiture

New Mexico became the first state to abolish civil forfeiture in 2015 and now requires all

forfeiture proceedings to have a corresponding criminal conviction of an individual and the property is then tried under a system of criminal forfeiture. Criminal forfeiture is directed to the individual, not the property, and the burden of proof is the heightened standard of proof beyond a reasonable doubt. Any money that the court deems to have been used in illegal activity is then seized and put into a “general fund” removing any improper law enforcement incentive or motive for forfeitures.²⁴ New Mexico has become the gold standard in the U.S. for civil forfeiture reform. Their reform process garnered widespread bipartisan support and passed unanimously in both legislative chambers.²⁵



Model State Level Asset Forfeiture Reforms
October 2015

Require Criminal Conviction

North Carolina,²⁶ Montana,²⁷ and Minnesota²⁸ have reformed forfeiture proceedings to only allow civil forfeitures if the property owner has been convicted of a crime. Innocent people are protected from losing their property and those who are found guilty of illegal activity stand to lose property acquired through ill-gotten gains. Once a criminal conviction has been secured, the property is tried in civil rather than criminal court. This option preserves the process but significantly narrows the potential for misuse or abuse by restoring civil forfeiture to its original intention. Additionally, linking the civil forfeiture action to the criminal case at least provides the citizen with some access to an attorney to help them in the forfeiture case as people are entitled to court-appointed counsel in the criminal action.

Change Where the Money Goes

As it stands under Nebraska state law, 50% of forfeiture proceedings go towards a generic law enforcement anti-drug fund. The other 50% go towards funding Nebraska public education. Under federal equitable sharing agreements, law enforcement receives up to 80% of the money they seize without any sharing with the schools. Under both systems there have been increasing concerns about improper motivations by law enforcement. States such as Maine²⁹, North Dakota,³⁰ and Vermont,³¹ have seen markedly fewer civil forfeiture cases since directing the seized assets to neutral accounts and have effectively ended any incentive to police for profit.³² It is important to note that under this system civil forfeiture still occurs in these states and all have a lower standard of proof than Nebraska. Reforming the direction and use of funds emanating from civil forfeiture is a policy reform that seeks to restore appropriate checks and balances in the system but the efficacy of this solution may be complicated by the existence of federal equitable sharing agreements.

Increase Transparency

Minnesota has adopted legislation that requires all county and state level law enforcement agencies to record every forfeiture seizure and send them to the state auditor to be published.³³ These records show what was seized, for what purpose, and the amount of money resulting from each seizure. The report also requires law enforcement agencies to report how the agencies spent the money they seized to ensure there are no abuses or unnecessary purchases. As it stands, there is no comprehensive data on the use of forfeiture in Nebraska. Some counties report their budgets with itemization of forfeiture funds received but no county appears to account for the expenditure of forfeiture funds with the same specificity. There is also no tracking of what forfeitures accompany a criminal conviction and which forfeitures are derived from people never found guilty of any crime. Improved data collection is a policy reform idea that ensures transparency, may prevent instances of misuse or abuse, and would foster a better understanding of the current use of civil asset forfeiture.

CONCLUSION

Civil forfeiture was designed with the good intention and sound policy to stymie criminals and drug lords but over time it has devolved into a system that ensnares innocent citizens and their private property rights. Nebraskans or visitors to our great state should not have to fear losing their personal private property to the government. People who have not been convicted of a crime should not spend years of their lives and significant funds on attorney bills to battle the full powers of the government in a system that is stacked against the individual from the very start. We believe the time is ripe for policymakers in Nebraska to conduct further review and analysis of one (or a combination) of the following policy reform solutions: increase transparency, improve accountability of funds, narrow applications to coincide with criminal convictions, or repeal the system and allow existing criminal law to accomplish legitimate public safety goals.

Nebraska Law Enforcement: Revenue from Federal Civil Forfeiture Agreements³⁴

Agency Name	FY 2014	FY 2013	FY 2012	FY 2011	FY 2010	Totals (\$)
Ashland Police Department		\$5,221				\$5,221
Belleue Police Department	\$113,517	\$37,290	\$38,948	\$17,195	\$23,424	\$230,374
Blair Police Department	\$5,509	\$1,535				\$7,044
Broken Bow Police Department		\$80,895		\$1,365		\$82,260
Buffalo County Attorney		\$2,049	\$1,967			\$4,016
Cass County Sheriff	\$2,378	\$3,193	\$1,288	\$9,516	\$2,323	\$18,698
Central Nebraska Drug&Safe Street Task Force	\$66,482	\$10,491	\$1,000			\$77,973
Chadron Police Department				\$15,445		\$15,445
Cheyenne County Attorney	\$211	\$5,267				\$5,478
Cheyenne County Sheriff		\$5,267				\$5,267
City of Norfolk Police Department	\$11,769					\$11,769
Dakota County Sheriff		\$3,445				\$3,445
Dawson County Attorney		\$500				\$500
Deuel County Sheriff	\$18,067	\$8,233	\$6,846		\$4,456	\$37,602
Dixon County Sheriff				\$3,697		\$3,697
Dodge County Sheriff	\$40,864					\$40,864
Douglas County Sheriff	\$436,468	\$648,580	\$1,023,512	\$1,417,531	\$1,112,995	\$4,639,086
Fremont Police Department	\$34,569		\$4,507	\$38,350	\$4,953	\$82,379
Grand Island Police Department	\$4,209	\$2,918		\$5,353	\$5,574	\$18,054
Hall County Attorney			\$3,386	\$1,701	\$26,188	\$31,275
Hall County Sheriff	\$20,146					\$20,146
Hamilton County Attorney		\$742	\$427	\$12,989		\$14,158
Kearney Police Department	\$2,946					\$2,946
La Vista Police Department	\$30,435	\$1,052			\$432	\$31,919
Lancaster County Attorney	\$38,109	\$62,738	\$66,754	\$74,747	\$65,236	\$307,584
Lancaster County Sheriff Office of Nebraska			\$2,762		\$2,649	\$5,411
Lincoln County Attorney	\$930	\$1,929	\$13,764		\$4,922	\$21,545
Lincoln County Sheriff			\$62,972	\$8,451		\$71,423
Lincoln Municipal Airport Police Department			\$8,240			\$8,240
Lincoln Police Department	\$163,734	\$26,490	\$85,966	\$151,401	\$118,263	\$545,854

Agency Name	FY 2014	FY 2013	FY 2012	FY 2011	FY 2010	Totals (\$)
Milford Police Department					\$14,836	\$14,836
Nebraska State Patrol	\$660,830	\$1,124,817	\$836,323	\$1,679,817	\$991,049	\$5,292,836
Norfolk Police Department				\$14,545	\$10,830	\$25,375
North Platte Police Department	\$19,986	\$130,567	\$12,665	\$4,855	\$3,775	\$171,848
Ogallala Police Department	\$5,123			\$843		\$5,966
Omaha Airport Authority			\$712		\$76,279	\$76,991
Omaha Police Department	\$619,246	\$351,491	\$457,589	\$456,150	\$995,862	2,880,338
Ord Police Department				\$1,268		\$1,268
Papillion Police Department				\$432		\$432
Pierce County Sheriff		\$12,562				\$12,562
Plattsmouth Police Department	\$16,241	\$2,908	\$3,866	\$7,216	\$3,334	\$33,565
Ralston Police Department	\$2,606	\$1,723	\$3,619		\$11,802	\$19,750
Rural Apprehension Program Drug Task Force	\$2,399					\$2,399
Sarpy County Sheriff	\$22,564	\$21,368	\$69,643	\$5,293	\$25,576	\$144,444
Scotts Bluff County Sheriff	\$4,178					\$4,178
Scottsbluff Police Department		\$3,132	\$961	\$6,952	\$3,564	\$14,609
Seward County Attorney	\$42,492	\$39,305	\$8,716	\$80,518	\$10,070	\$181,101
Seward County Sheriff		\$37,638		\$404,822	\$228,453	\$670,913
South Sioux City Police Department	\$3,201	\$6,000	\$13,681	\$9,485	\$26,712	\$59,079
Tri-City Federal Drug Task Force				\$66,869	\$33,768	\$100,637
Valley County Sheriff			\$1,268			\$1,268
Valley Police Department		\$1,943				\$1,943
Washington County Sheriff			\$355	\$7,587	\$1,769	\$9,711
York County Attorney		\$1,266				\$1,266
York County Sheriff		\$6,023	\$18,083			\$24,106
Southeast Area Drug Enforcement				\$26,444		\$26,444
Total	\$2,389,119	\$2,662,935	\$2,750,340	\$4,510,690	\$3,829,511	\$16,142,595

ENDNOTES

- 1 John Malcolm and Susan Herman, “ACLU, Heritage Foundation Agree: Reform Forfeiture Laws.” Des Moines Register, September 9, 2015, <http://www.desmoinesregister.com/story/opinion/columnists/2015/09/09/aclu-heritage-foundation-agree-reform-forfeiture-laws/71966978/>. See also Jason Snead, “Why Michigan’s Attorney General Has Backed Forfeiture Reform.” The Daily Signal, October 5, 2015, <http://dailysignal.com/2015/10/05/why-michigans-attorney-general-has-backed-forfeiture-reform/>.
- 2 Nick Sibilla, “Cops in Texas Seize Millions by ‘Policing for Profit,” Forbes, June 5, 2014, <http://www.forbes.com/sites/instituteforjustice/2014/06/05/cops-in-texas-seize-millions-by-policing-for-profit/>.
- 3 *State of South Dakota v. Fifteen Impounded Cats*, 785 N.W.2d 272 (S.D. 2010). The fifteen cats in this case were living in one car with their owner (and one litter box) when a police officer became concerned.
- 4 *United States v. Approximately 64,695 Pounds of Shark Fin*, 520 F.3d 976 (9th Cir. 2008). In this case, the claimant of the shark fins won his appeal because the Court ruled the seizure was illegal.
- 5 *United States v. Article Consisting of 50,000 Cardboard Boxes More or Less, Each Containing One Pair of Clacker Balls*, 413 F. Supp. 1281, (E.D. Wis. 1976). It should be noted that the Court ruled in favor of the government, and since the clacker balls were deemed hazardous to children, the government ordered them destroyed once they won the case.
- 6 Ironically, the federal system does permit a free court-appointed attorney if one is also facing criminal charges. See 18 USC 983(b). But an indigent person who has no criminal charges has no right to an attorney in a stand alone civil forfeiture case.
- 7 U.S. Department of Justice, Guide to Equitable Sharing for State and Local Law Enforcement Agencies, April 2009, 6, (III)(B), <http://www.justice.gov/sites/default/files/criminal-afmls/legacy/2014/07/31/04-2009guide-equit.pdf>
- 8 *Ibid.*, 12, (VII) (A).
- 9 *Ibid.*, 16, (V) (A.1).
- 10 Order from the Office of the Attorney General, “Prohibition on Certain Federal Adoptions of Seizures by State and Local Law Enforcement Agencies,” January 16, 2015, <http://www.justice.gov/file/318146/download>
- 11 Neb. Rev. Stat. 28-431 says “At any time after seizure and prior to court disposition, the owner of record of such property may petition the district court of the county in which seizure was made to release such property, and the court shall order the release of the property,” but see *Obad v State*, 277 Neb. 866 (2009).
- 12 Nebraska Revised Statute 28-431(4).
- 13 Nebraska Constitution Article VII-5.
- 14 Data request from Nebraska State Court Administrator’s office for civil forfeiture cases from January 2011 to June 2015, data available from ACLU of Nebraska upon request. This figure only represents the currency seizures that office could easily track. It does not represent seizures of cars, real estate, or personal property. The administrator’s office indicated there could be additional cases not retrieved by their data search.
- 15 Radley Balko, “More Fallout from Eric Holder’s Changes to Civil Asset Forfeiture Law,” Washington Post, January 19, 2015, <http://www.washingtonpost.com/news/the-watch/wp/2015/01/19/more-fallout-from-eric-holders-changes-to-civil-asset-forfeiture-law/>.
- 16 *Ibid.*
- 17 John R. Emshwiller and Gary Fields, “County Sheriff Enjoys Fruits of Forfeitures,” Wall Street Journal, August 22, 2011, <http://www.wsj.com/articles/SB10001424053111903596904576514583716653122>.
- 18 <http://www.justice.gov/afp/reports-congress>. Numbers compiled from annual reports for Nebraska equitable sharing reports from years 2004 through 2014. There is no way to calculate the amount of funds seized through the state court system in Nebraska. No reporting requirements exist that permit a researcher to identify how many dollars have been forfeited outside of the federal system.
- 19 Madison Park, “90 Percent of U.S. Bills Carry Traces of Cocaine,” CNN, August 17, 2009, <http://www.cnn.com/2009/HEALTH/08/14/cocaine.traces.money/>
- 20 Note: Currency Contamination and Drug-Sniffing Canines: Should Any Evidentiary Value Be Attached to a Dog’s Alert on Cash? Andy G. Rickman, 85 Ky.L.J. 199 (Fall 1996-1997).
- 21 See Note 15.
- 22 “Guide to Equitable Sharing,” See Note 7, V (A1). “The recipient agency must benefit directly from the sharing,” and, “... the Department of Justice will examine the law enforcement agency’s budget as a whole and allow agencies to use suitable sharing funds for any permissible purpose as long as shared funds increase the entire law enforcement budget,” (Bold in original).
- 23 Nick Sibilla, “Civil Forfeiture Now Requires a Criminal Conviction in Montana and New Mexico,” Forbes, July 2, 2015, <http://www.forbes.com/sites/instituteforjustice/2015/07/02/civil-forfeiture-now-requires-a-criminal-conviction-in-montana-and-new-mexico/>.

- 24 N.M. Stat. Ann. § 31-27-1 et seq., <http://www.nmlegis.gov/Sessions/15%20Regular/bills/house/HB0560.pdf>. Section 8.C, lines 20-22.
- 25 Adam Bates, “New Mexico Gov. Susana Martinez Signs Civil Forfeiture Abolition Bill,” Cato Institute, April 10, 2015, <http://www.cato.org/blog/new-mexico-governor-susana-martinez-signs-civil-forfeiture-abolition-bill>.
- 26 N.C. Gen. Stat. § 14-2.3, http://www.ncga.state.nc.us/enactedlegislation/statutes/pdf/bychapter/chapter_14.pdf
- 27 MCA 44-12-___, et seq. <http://leg.mt.gov/bills/2015/sesslaws/ch0421.pdf>
- 28 Minn. Stat. § 609.5312, <https://www.revisor.mn.gov/statutes/?id=609.5312>.
- 29 15 M.R.S. § 5826, <http://legislature.maine.gov/statutes/15/title15ch517.pdf>.
- 30 N.D. Cent. Code, § 29-31.1-06, <http://www.legis.nd.gov/cencode/t29c31-1.pdf?20150710123229>.
- 31 18 V.S.A. § 4247, <http://law.justia.com/codes/vermont/2014/title-18/chapter-84/section-4247>.
- 32 Sarah Stillman, “Taken” New Yorker, August 12, 2013, <http://www.newyorker.com/magazine/2013/08/12/taken>.
- 33 Minn. Stat. § 609.5315, <https://www.revisor.mn.gov/statutes/?id=609.5315>
- 34 Department of Justice Reports to Congress, <http://www.justice.gov/afp/reports-congress>

Guilty Money

Civil Asset Forfeiture in Nebraska



aclunebraska.org