



Addicted to the drug war

The role of civil asset forfeiture as a budgetary necessity in contemporary law enforcement

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Abstract

Civil asset forfeiture is no stranger to criticism, in part because law enforcement agencies can share in the proceeds obtained from forfeitures. Critics claim that this potential for “profit” in law enforcement is the driving force behind civil asset forfeiture; that the noble goals of controlling crime and curbing illicit drug use are not high priorities. The research reported in this article partially substantiates critics’ claims that pecuniary concerns guide civil asset forfeiture activities. Results from a survey of 1400 municipal and county law enforcement executives revealed that a substantial proportion of law enforcement agencies are dependent on civil asset forfeiture as a *necessary* budgetary supplement. In an attempt to explain the “addiction,” evidence is offered that dependence on civil asset forfeiture is positively associated with revenues generated from past forfeiture activities and inversely related to fiscal expenditures. The primary implication tied to these findings is that a conflict of interest between effective crime control and creative fiscal management will persist so long as law enforcement agencies remain dependent on civil asset forfeiture. © 2001 Elsevier Science Ltd. All rights reserved.

Introduction

Civil asset forfeiture allows for the seizure and forfeiture of property derived from or used to facilitate certain crimes (Kessler, 1993). It is used in a number of criminal contexts, but is largely designed to weaken the economic foundations of the illicit drug trade and assist law enforcement in reducing drug-related crime (Department of Justice, 1994a). There are literally hundreds of state and federal statutes (e.g., President’s Commission on Model State Drug Laws, 1993) that authorize the seizure of assets linked to drug offenses (not to mention other types of crime), and courts have consistently ruled that such

statutes are constitutional, but civil asset forfeiture continues to be one of the most controversial weapons in the drug war arsenal (Morganthau & Katel, 1990; Pratt & Peterson, 1991; Wisotsky, 1991).

One reason that civil asset forfeiture is controversial is that, depending on the forum in which forfeiture proceedings are pursued (local, state, or federal), law enforcement officials can share in the proceeds derived from forfeitures (Blumenson & Nilsen, 1998, p. 52; Department of Justice, 1994b). This potential for “profit” in law enforcement, otherwise known as “equitable sharing,” has contributed to a near decade-old intellectual and legal battle about the disposition and distribution of forfeited assets (e.g., Atkins & Patterson, 1991; Hawkins & Payne, 1999). The law enforcement view is that forfeited assets should be reserved for law enforcement purposes. Alternatively, critics claim that the police

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should never view their duties as a means of raising revenue for government agencies (McNamara, 1999; Thomas, 1999; Zalman, 1997).

State and federal laws vary in terms of what, if any, proceeds derived from civil asset forfeiture can be returned to the law enforcement agency (or agencies) that initiated the forfeiture proceeding(s) (Blumenson & Nilsen, 1998, p. 54). This has led to fears that state and local agencies are circumventing state requirements, especially state requirements that prohibit law enforcement officials from sharing in the proceeds derived from civil asset forfeiture (e.g., Levy, 1996). Critics have claimed that the state and local agencies that participate with federal officials in civil forfeiture actions inadvertently contribute to an expanded role of the federal government in crime control, a notion antithetical to the ideals of federalism (Blumenson & Nilsen, 1998).

An interesting issue raised by the potential for law enforcement to receive a “kickback” from forfeiture is the role civil asset forfeiture, particularly equitable sharing, plays as a budgetary supplement. There are at least three ways forfeiture proceeds can be viewed with respect to law enforcement agencies’ traditional budgets. One view (perhaps the most common) is that forfeiture proceeds can help to assist law enforcement officials by funding continued drug war activities. Another view is that forfeiture can be seen, more generally, as a fortuitous source of income that helps compensate for budgetary shortfalls. A final, perhaps more insidious view is that law enforcement agencies may be coming to depend on forfeiture in light of the revenue that stands to be earned. The latter, dependence-oriented perspective was the focus of the research reported here.

If the amounts of money and property seized from civil forfeiture were scarce and dispersed, there would hardly be a cause for concern. However, because the proceeds from forfeitures run into the hundreds of millions, if not billions, of dollars annually, the potential for “addiction” is not to be taken lightly. For example, in fiscal year 1996 alone, the Justice Department’s Asset Forfeiture Program controlled US\$338.1 million dollars, not to mention tens of thousands of pieces of real property. That amount was actually down by nearly US\$200 million from the year before (Department of Justice, 1991). During the *height* of the drug war the Asset Forfeiture Program routinely oversaw amounts larger than half a billion dollars each year (Hyde, 1995). And with respect to asset forfeiture activities at the state and local level, one researcher recently found that it is not uncommon for single law enforcement agencies in large counties and municipalities to receive tens of millions of dollars from civil forfeiture during relatively short periods of time (Worrall, 1999).

Clearly, civil asset forfeiture can be a useful alternative source of income for law enforcement agencies, but some supporters have gone so far as to claim that forfeiture can, and even should, *supplant* traditional budgets. For example, the Justice Research and Statistics Association has made the following observation:

Asset seizures play an important role in the operation of [multijurisdictional drug] task forces. One “big bust” can provide a task force with the resources to become financially independent. Once financially independent, a task force can choose to operate without federal or state assistance (Justice Research and Statistics Association, 1993, p. 9).

Whether or not this is a suggestion that drug task forces should attempt to fund themselves is unclear, but it is not difficult to see what pecuniary concerns can play when law enforcement officials aggressively target money and property tied to both alleged and actual criminal activity.

The findings from the Justice Research and Statistics Association’s report hardly stand alone. Reports from some US Attorneys’ offices have shown seizures equal to as much or all of their operating budgets (Hawk, 1993). According to US Attorney Frederick W. Thieman (Hawk, 1993, p. 7), figures from 1993 demonstrated that “. . . \$1.9 million in asset forfeitures . . . [paid] for the operation of the entire US Attorney’s Office [of the Western District of Pennsylvania] . . .” Moreover, in reference to a New York Law Journal article, Blumenson and Nilsen (1998, p. 63) reported that “in an eight month period during 1989 . . . the United States Attorney’s office in the Eastern District of New York collected \$37,000,000 from civil forfeitures,” four times its operating budget. Thus, forfeiture laws have permitted governments to become “full financial partners and participants in the drug business” (Kessler, 1993, p. 1.01). And to the extent that law enforcement agencies come to expect revenue from forfeiture, it is possible that other goals (e.g., service and crime control) are compromised.

In light of the hotly contested nature of civil forfeiture, there have been virtually no empirical studies of civil forfeiture (the lone exception appears to be Warhol & Johnson, 1996). Moreover, the fiscal budgeting perspective on civil forfeiture has been ignored entirely. It would seem that additional *empirical* attention to civil asset forfeiture, especially to the pecuniary concerns associated with the seizure of money and property, would be a worthy pursuit. Research in this area may help allay (or reinforce) some of the widespread fears that civil asset forfeiture laws are being abused by law enforcement officials (e.g., Hyde, 1995; Levy, 1996).

In an attempt to fill the gaps left by previous forfeiture research, this article reports on a nationwide survey of 1400 law enforcement executives concern-

ing their experiences with civil asset forfeiture. Specifically, data were gathered on “adoptive” forfeitures, that is, forfeitures where state and local officials participated with federal officials in order to receive a “cut” of the proceeds; amounts of proceeds received from forfeiture; and perceptions of civil asset forfeiture as a tool for managing fiscal constraints. Since there have been no surveys of law enforcement’s experiences with civil asset forfeiture, it is hoped that the results of the survey reported here contribute something more than rhetoric to the debate over civil asset forfeiture, as much of the current concern and criticism is linked to “celebrated” cases (e.g., Hyde, 1995).

This article takes a step beyond mere reporting, however. Evidence is offered that, indeed, a substantial proportion of law enforcement agencies *are* dependent on civil asset forfeiture, that forfeiture is coming to be viewed not only as a budgetary supplement, but as a necessary source of income. Potential explanations for “addiction” to civil asset forfeiture are then introduced. These are based on three primary factors: (1) past experiences with civil asset forfeiture; (2) fiscal expenditures; and (3) state regulations concerning the disposition of forfeited assets to law enforcement agencies and other criminal justice entities. Empirical tests of these explanations — including agency size as a control variable — reveal that dependence on civil asset forfeiture is tied to past forfeiture activities and, to a lesser extent, on fiscal expenditures.

Background: the controversy over civil asset forfeiture

Civil asset forfeiture’s supporters hail, not surprisingly, from all arenas of local, state, and federal government. Prosecutors, law enforcement officers, Justice Department officials, even US Presidents, as well as others, have supported civil forfeiture with near unanimous consensus. Supporters have argued that civil forfeiture is an essential law enforcement tool, and that the “war on drugs” will never be won so long as criminals profit from their enterprises (e.g., Asset Forfeiture Office, 1994; Department of Justice, 1990, 1994b, 1995; Drug Enforcement Administration, Strategic Intelligence Division, 1993, 1994; Executive Office for Asset Forfeiture, 1994a, 1994b; General Accounting Office, 1990, 1991, 1992; Myers & Brzostowski, 1982). As the President’s Commission on Model State Drug Laws (1993, p. A-29) remarked, forfeiture serves three remedial goals: it “(1) removes financial incentive to engage in illegal activity; (2) restores economic integrity to the marketplace; and (3) compensates society for economic damages suffered due to illegal activity by rededicating forfeited property to socially beneficial uses.”¹

Of course, civil asset forfeiture has just as many, if not more, critics (e.g., NACDL, 1996; Rudnick, 1992). The practice has been attacked by an unlikely coalition of critics, including conservative politicians. Critics have sensationalized the “drug war’s hidden economic agenda” (Blumenson & Nilsen, 1997), referring to the means by which forfeiture annihilates due process (Jensen & Gerber, 1996) and encourages egregious law enforcement blunders (Hyde, 1995). Critics have also maintained that civil forfeiture tramples the Bill of Rights, circumvents proper appropriations channels, threatens the freedom of law abiding citizens, and guarantees a conflict of interest between crime control and fiscal management (Levy, 1996).

Both sides have been extremely vocal on the subject of civil forfeiture, but the voices of critics have almost drowned out the competition (e.g., Bauman, 1995; Burnham, 1996; Chapman, 1993; Enders, 1993; Greenburg, 1995; Rosenberg, 1988). In addition to criticisms of equitable sharing, which I address later, the critics have attacked civil forfeiture for its allegedly “perverted procedures” (Hyde, 1995). These procedural matters deserve special consideration.

Procedural controversies

Civil asset forfeiture should be distinguished from criminal forfeiture. Criminal forfeiture proceedings are in personam, which means they target criminal defendants. Criminal forfeiture proceedings “are implemented in conjunction with the criminal prosecution of a defendant” (Warchol, Payne, & Johnson, 1996, pp. 53–54), and criminal forfeiture can only follow a criminal conviction. Moreover, criminal forfeiture is not to be confused with restitution or fines as potential penalties for criminal conduct. Civil forfeiture proceedings, on the contrary, are in rem proceedings, meaning that they target *property*. Civil forfeiture does not require that formal adversarial proceedings be initiated, and the property owner’s guilt or innocence is largely irrelevant.

Civil asset forfeiture can be traced to an “archaic and curious legal fiction that personifies property” (Hyde, 1995, p. 17). The personification of property originated in biblical times with deodands, which were things “forfeited, presumably to God for the good of the community, but in reality to the English crown” (Levy, 1996, p. 7). If, for example, an inanimate object was responsible for a person’s death, then the object was held in forfeit — as a deodand — in response to the superstition that the victim’s soul would not rest until the object was accused and subsequently atoned. The Supreme Court has stated:

Traditionally, forfeiture actions have proceeded upon the fiction that the inanimate objects themselves can

be guilty of wrongdoing. Simply put, the theory has been that if the object is “guilty,” it should be held forfeit. In the words of a medieval English writer, “Where a man killeth another with the sword of John at Stile, the sword shall be forfeit as deodand, and yet no default is in the owner.” The modern forfeiture statutes are the direct descendants of this heritage (*United States v. United States Coin and Currency*, 1971).

The notion that property can be “animate” and somehow responsible for wrongdoing is manifested in administrative and civil judicial proceedings where the government essentially sues property. Consider the names of the parties in two representative cases: *United States v. One Mercedes 560 SEL* (1990) and *United States v. One Parcel of Land at 508 Depot Street* (1992). This is important because the in rem proceeding is what ignites civil asset forfeiture’s critics. In rem proceedings are sometimes controversial because they can shift the burden of proof from the state to the property owner (Durking, 1990; Petrou, 1984). Such proceedings can require the property owner to demonstrate, among other things, that the property was not used to facilitate a crime, nor that it was derived from the proceeds of criminal activity.

Asset forfeiture has also been criticized because law enforcement officials often need only demonstrate probable cause that the property is subject to forfeiture, not proof beyond a reasonable doubt as in criminal cases. And as Yoskowitz (1992, p. 575) has pointed out, “as a practical matter, the government usually meets the initial burden of proof of probable cause simply by filing a verified complaint.” The courts have allowed the government to use hearsay, circumstantial evidence, tips from anonymous informants (*United States v. All Funds on Deposit or Any Accounts Maintained at Merrill Lynch*, 1992) or information that is obtained *after* the seizure to establish probable cause in hindsight, *even if the initial seizure was illegal* (Yoskowitz, 1992, emphasis added; see also *United States v. One 56-Foot Yacht Named Tahuna*, 1983; *United States v. One 1977 Mercedes-Benz 450 SEL*, 1983).

Civil forfeiture’s critics also contend that the law is equivocal about what is subject to forfeiture. Federal civil forfeiture law provides for the forfeiture of property that “facilitated” a drug crime; however, there is not always a clear indication of what constitutes facilitation (e.g., Heilbroner, 1994; *US v. Real Property Located at 6625 Zumirez Drive*, 1994). Moreover, the growing scope of civil forfeiture laws has raised many questions. Federal civil forfeiture laws have evolved from a focus on property to money and, more recently, to all real property.² Burnham (1996) has criticized these legislative changes, claiming that law enforcement officials can justify seizures

without demonstrating that the property in question is clearly linked to criminal activity.

The legislative progression does not stop with addition of real property, however. Hyde (1995, p. 25) has pointed out that the offenses subject to forfeiture are also growing in number:

The 1986 Anti-Drug Abuse Act expanded civil forfeiture to include the proceeds of money-laundering activity. Certain 1990 amendments to that act included proceeds traceable to counterfeiting and other offenses affecting financial institutions — a bow to the savings and loan scandals. Then in 1992 Congress added more categories of offenses and also covered proceeds traceable to motor vehicle theft.

This broadening progression of federal forfeiture law says nothing about state forfeiture laws. And to the chagrin of the critics, some cases seem to suggest that state laws allow authorities more latitude with forfeiture (e.g., *Bennis v. Michigan*, 1996).

The remedial options for individuals whose property is subject to forfeiture are sometimes problematic as well; all the weight of the justice system can be stacked against property owners (Goldsmith & Linderman, 1989; Kasten, 1991). Sometimes it is “. . . up to the owner to challenge the seizure in a costly and unpromising hearing” (Blumenson & Nilsen, 1997, p. 47). Thus, in cases where the forfeited property is not very valuable, the owner may have to make a cost/benefit decision, grudgingly conceding that it is best to “let the property go” (Edwards, 1994; Yoskowitz, 1992) because attorney fees can be too costly. As might be expected, the majority of forfeitures go unchallenged (General Accounting Office, 1989).

Forfeiture at the federal level has also been criticized because property owners are allowed less than 2 weeks to file a claim in federal court to challenge a forfeiture, and, until recently, they were required to post a 10 percent cash bond based on the value of the property simply to have their day in court (Hyde, 1995). Furthermore, the government has not always been liable for damage, storage, and maintenance costs while property is in its possession (Hyde, 1995).

Civil forfeiture has also been problematic for innocent owners, again because the owner’s guilt or innocence does not matter (see *Bennis v. Michigan*, 1996; Canavan, 1990; O’Brien, 1991; Saltzburg, 1992; Stahl, 1992; Zeldon & Weiner, 1991). If innocent owners can muster the resources to challenge the seizure of their property, they can sometimes raise a successful innocent owner defense. According to 21 U.S.C. § 881(a)(7), property cannot be forfeited if the criminal activity at issue was “committed . . . without the knowledge or consent of [the] owner” (e.g., *United States v. Bajakajian*,

1998). However, there is no such protection in the some 200 civil forfeiture statutes at the state level (Levy, 1996), although there are some exceptions. “The federal courts simply have not clearly or uniformly explained the innocent owner defense, and Congress has not intervened to settle the matter” (Levy, 1996, p. 164). In addition, the innocent owner defense is only relevant if the forfeiture is challenged.

Still other questions have been raised concerning the propriety of civil asset forfeiture, including the so-called relation-back doctrine (Jankowski, 1990). The relation-back doctrine is embodied in 21 U.S.C. § 881(h) and provides that “all right, title and interest in property [subject to forfeiture] shall vest in the United States upon commission of the act giving rise to forfeiture” (e.g., *United States v. 92 Buena Vista Ave., Rumson*, 1993). Still other concerns have been raised about the significance of the Fourth Amendment in civil forfeiture activities (Nelson, 1992; Speta, 1990).

One of the most controversial aspect of civil asset forfeiture is, of course, equitable sharing. Many observers have become concerned that the profit motive is winning out over the nobler goal of crime control (Dortch, 1992; Shaw, 1990; Willson, 1990).

The Civil Asset Forfeiture Reform Act of 2000

As this article was under review, the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) was signed into law by the President Clinton. This was a significant victory for civil asset forfeiture’s critics. Among other things, the new legislation shifts the burden of proof in federal forfeiture proceedings from the property owner to the state, eliminates the cost bond requirement, provides for reasonable attorney’s fees for property owners who prevail in forfeiture proceedings, and creates a uniform innocent owner defense for all federal forfeiture proceedings.

The new legislation certainly minimizes the procedural controversies associated with civil asset forfeiture. Unfortunately, however, CAFRA is binding only on the federal government. States can decide themselves whether or not to follow the procedures outlined in CAFRA or change their own laws. In addition, and more importantly still, CAFRA does nothing to change the law pertaining to equitable sharing. That is, the potential for law enforcement to profit remains unchanged. This controversial feature of civil asset forfeiture is the primary focus of the remainder of this article.

Potential explanations for “addiction”

The foregoing has illustrated some of the controversies and problems inherent with civil asset for-

feiture. Much of the extant literature seems to suggest that pecuniary concerns can motivate forfeiture activities. This raises at least two questions. First, is law enforcement coming to depend on civil asset forfeiture? Second, to the extent “addiction” is present, what explains this state of affairs? It has already been indicated that the former question will be answered in the affirmative. First, however, potential explanations for the “addiction” are reviewed, as these were incorporated into the multivariate models of “addiction” reported below.

To its critics, civil asset forfeiture is particularly loathsome because the agencies participating in forfeitures can also share in the proceeds. Prior to the Comprehensive Crime Control Act of 1984, the profits from *federal* civil asset forfeitures were deposited in the general fund of the US Treasury. Nowadays, at least at the federal level, the money goes to the Justice Department’s Asset Forfeiture Fund and to the Treasury Department’s Forfeiture Fund [see 28 U.S.C. § 524(c)(4) (1988 and Supp. IV 1992)]. “The money is then supposed to be used for forfeiture-related expenses and general “law enforcement purposes,” with no further necessity for congressional appropriations or authorization” (Hyde, 1995, p. 30).

The “equitable sharing” provision of the Comprehensive Crime Control Act of 1984 allows federal agencies to divide the proceeds derived from civil forfeitures with all participating agencies. State laws vary as to whether they return seized assets to participating agencies, but under federal law, participating nonfederal agencies are entitled to a (legal) “kick-back” that is currently 80 percent (Executive Office for Asset Forfeiture, 1994a). One of civil forfeiture’s most ardent critics has made this observation:

Nothing revolutionized forfeiture in this country as much as equitable sharing. Its impact has been enormous, because it provides an intense incentive for law enforcement agencies at the state and local levels to search for assets connected with crime and to seize them for forfeiture. The incentive is self-aggrandizement: what the police take they will likely get to keep for their departments under federal law (Levy, 1996, p. 147).

The potentials for abuse and conflict-of-interest are obvious — equitable sharing not only provides an attractive budgetary supplement, but it encourages the circumvention of state forfeiture laws, thereby expanding the jurisdiction of federal law enforcement officials (Blumenson & Nilsen, 1997). This technique of “federalizing” forfeitures, or giving them up for “adoption” (also known as adoptive forfeitures) has been the target of numerous legislative reform proposals (e.g., Hyde, 1995).

Thus, it is reasonable to assume that increased participation in adoptive forfeitures could be tied to a dependence on civil asset forfeiture. According to Blumenson and Nilsen (1998, p. 51), “at a time when state and local government budgets are shrinking, equitable sharing offers a new source of income, limited only by the energy police and prosecutors are willing to commit to seizing assets.” In short, it was predicted that *the incidence of federalized seizures would be positively associated with “addiction.”*

Second, in cases where state and local law enforcement officials do not (or cannot) give up forfeiture cases for “adoption,” there is still a potential to share in the proceeds derived from forfeiture. As pointed out earlier, state law varies in terms of what percentage of forfeiture proceeds (if any) can go to law enforcement. At least three varieties of state laws are favorable to law enforcement. Each of these are reviewed in detail below (and in Appendix A), but for now suffice it to say that state laws governing the distribution of forfeited assets can be expected to related to dependence on forfeiture. For example, some states allow more than 80 percent of the proceeds derived from civil forfeiture to go to law enforcement. Other state legal requirements, found in states that require proceeds to go into the general fund, are less likely to contribute to the growing dependence on civil asset forfeiture. Thus, it was predicted that *state laws authorizing a substantial proportion of civil forfeiture proceeds to go to law enforcement will be associated with “addiction.”*

Third, in light of the observations by Hawk (1993) and others that forfeiture can be used to augment, even supplant fiscal budgets in some instances, it is reasonable to expect that past experiences with forfeiture will also be tied to the potential for “addiction.” Accordingly, it was predicted that *the proceeds derived from civil asset forfeiture would be positively associated with dependence on civil forfeiture.* Put another way, as agencies come to receive more money and property from civil forfeiture, the more likely it is that they will come to depend on the practice.

Of course, a measure of total proceeds received excludes, a priori, those agencies that are prohibited by state law from sharing in the proceeds obtained from forfeitures. Moreover, just because an agency does not receive forfeiture proceeds does not mean that the potential for “addiction” will be absent. Some law enforcement agencies never receive forfeiture funds but are nonetheless aggressive in seizing money and property. The sheer incidence of attempted forfeitures (i.e., seizures), therefore, can be expected to serve as a useful predictor of “addiction” to civil asset forfeiture. Accordingly, it was predicted that *the incidence of seizures (whether or not money was*

actually returned to the participating agency) would be positively associated with “addiction.”

Fifth, it was predicted that fiscal expenditures will be inversely related to “addiction.” Blumenson and Nilsen (1998, p. 40) have observed that “during the past decade, law enforcement agencies increasingly have turned to asset seizures and drug enforcement grants to compensate for budgetary shortfalls, at the expense of other criminal justice goals.” Thus, it is reasonable to expect that agencies with limited or restricted budgets will come to rely on civil forfeiture more than agencies that are better off, at least insofar as Blumenson and Nilsen’s (1998) observations are accurate. Either way, the research reported here predicted that *law enforcement agencies with a “fiscal advantage” over other agencies would be less reliant on civil asset forfeiture as a means to compensate for budgetary shortfalls.*

Finally, it is reasonable to expect that *agency size is associated with dependence on civil asset forfeiture*, although there is no theoretical justification for specifying the directionality of such a relationship. It could be that large agencies enjoy large budgets, thereby reducing the need for civil forfeiture. Alternatively, large agencies could be those most in need of supplementary income to finance drug task forces, narcotics squads, and the like. More likely is the latter perspective; large agencies are, on average, confronted with more serious crime problems, and must occasionally be creative and innovative in their endeavors to combat illegal activity. Agency size is thus an important variable that deserves to be included in any model of “addiction” to civil asset forfeiture.

Methods

This article has two interrelated goals. The first goal of this article is to offer evidence that a substantial proportion of law enforcement agencies is dependent on civil asset forfeiture. The second goal is to offer an explanation for this phenomenon. Accordingly, this section describes the sources of data, variables, and statistical techniques used to reach the conclusions that many law enforcement agencies are dependent on civil asset forfeiture and that the dependence is tied to past forfeiture activities and fiscal expenditures.

Sources of data

Three data sources were used in the analysis reported here. The first data set was obtained from a national survey of law enforcement agencies conducted in 1998. The second source of data was actually several subsources, namely the various civil

and criminal codes of the 50 states and the District of Columbia. The third source of data was the Law Enforcement Management and Administrative Statistics (LEMAS) data set for 1993, the most recent year for which data are publicly available. Data from these latter two sources were merged into the 1998 *Policing Issues Survey* data set.

Policing Issues Survey

Under the auspices of the Division of Governmental Studies and Services at Washington State University, a survey was sent to 1400 police executives and county sheriff's nationwide during 1998.³ The population for the survey was all municipal police departments and county sheriff's executives appearing in the 1998 *National Directory of Law Enforcement Administrators*. Two survey samples were drawn from that source. One was a sample of 700 police agencies employing more than 100 full-time sworn officers/deputies. This first sample attempted to reach *all* agencies with more than 100 officers/deputies, and was patterned after the sample collected in the 1993 LEMAS survey conducted by the Bureau of Justice Statistics. The second sample was of all the municipal police agencies and county sheriff's agencies appearing in the *National Directory* that employed *less than* 100 full-time sworn officers. The second sample was stratified random based on the type of agency (municipal police, county sheriff), size of population served, and number of sworn officers/deputies. Both samples were chosen so that they could be merged with both the LEMAS sample and the *Policing Issues Survey* sample.

The civil asset forfeiture section of the *Policing Issues Survey* asked a series of questions. Municipal police chiefs and county sheriffs were asked several forfeiture-related questions, three of which are pertinent to the research reported here:

1. Of the total number of times in the *previous three years* that your agency seized money or goods through civil forfeiture, on how many separate occasions did federal agencies act in conjunction with your agency?;
2. Please enter the estimated value of money and goods received by your agency during the *previous three years* from civil forfeitures; and
3. Please provide your reaction to the following statement by checking the appropriate response: Civil forfeiture is necessary as a budgetary supplement for my agency.

The responses available for the latter question were "strongly agree," "agree," "neutral," "disagree," and "strongly disagree."⁴

Overall, the survey response rate was 55 percent (770 of 1400 agencies responding). The response rate for large agencies was 60 percent (417 of 700 agencies responding) and the response rate for the small agencies was 50 percent. A probable reason for the low response rate among small agencies was that many small agencies do not have the resources and/or personnel available to complete the survey. Other potential reasons for the overall 55 percent response rate were that the survey took some time to complete and that the questions asked were somewhat sensitive.

After comparing the characteristics of respondents with nonrespondents, it was determined that there was some nonresponse bias. To probe nonresponse bias, particularly regional nonresponse, the author calculated two logistic regression models with response/nonresponse as a dependent variable. The first model included both agency size and population size as independent variables. This first model was unable to predict nonresponse (the model was no improvement over a model with all coefficients equal to zero). The author then calculated a second logistic regression model, this time including the four main census regions (Northeast, Midwest, South, and West). These were coded as three separate dummy variables. This second model was a significant improvement over the model without region as an independent variable, that is, it was able to predict nonresponse. The author coded the Southern Census region as the reference category and found that, relative to Southern agencies, Midwestern and Western agencies were more likely to respond to the *Policing Issues Survey*. This could have been due to the location of the author's university, but this is nothing more than speculation. Accordingly, readers should be aware that there was *some* nonresponse bias in the results reported below.

State forfeiture laws

As indicated in the literature, varieties of state laws governing the disposition and distribution of forfeited assets are believed to be of particular relevance to the apparent dependence on civil asset forfeiture. Accordingly, the author reviewed the relevant statutory provisions for each of the 50 states and the District of Columbia (see Appendix A).

It was predicted that the statutory provisions that were most favorable to law enforcement would be the most likely to contribute to dependence on civil asset forfeiture. The author categorized state forfeiture laws in 11 different ways (see Appendix A for the categorization and relevant statutory citations). However, the three types of law governing the disposition and distribution of forfeited assets that were expected to contribute to "addiction" were as follows: (1) state laws where 80 percent or more of the proceeds go to

law enforcement; (2) state laws that permit agencies to share in forfeiture proceeds based on their contribution; and (3) state laws that specify that forfeiture proceeds go into a crime control fund (e.g., a drug awareness and education fund).

There are various reasons why law enforcement stands to benefit from the three legal arrangements selected for analysis. The first category was chosen because there is arguably less of an incentive to pursue adoptive forfeitures (forfeitures with federal officials), especially if close to 100 percent of the proceeds can be returned to law enforcement. Concerning the second category, state laws that permit agencies to share forfeiture proceeds based on their contribution also have a potential to be rewarding, especially if only one agency initiates forfeiture proceedings. Finally, even though state laws that require forfeiture proceeds to go into a crime control fund do not benefit participating agencies *directly*, such legal arrangement still benefit law enforcement overall (especially when the revenue is used to fund programs such as DARE).

Law Enforcement Management and Administrative Statistics

The third source of data used in the analysis was the LEMAS survey. One variable from the LEMAS data set believed to have a bearing on dependence on civil asset forfeiture concerned total fiscal expenditures. As indicated, the author predicted that total fiscal expenditures will be inversely related to dependence on civil asset forfeiture. Another important LEMAS variable included in the analysis was agency size. The LEMAS data set contains one variable for the average number of sworn officers/deputies that was also used in the analysis, although primarily as a control variable.

It was possible to use the LEMAS data set because the *Policing Issues Survey* sample was patterned after the LEMAS sample. Unfortunately, the most recent publicly archived LEMAS data set is for 1993. The 1997 data are currently being compiled,

and, as of this writing, are not available. Nevertheless, it is reasonable to assume that the fiscal expenditures figures reported in 1993 compared to those reported in 1997 are highly correlated. There is no way to know this for sure as of this writing, so the use of 1993 LEMAS data should be acknowledged as a potential limitation of the research reported here.

Variables and coding

The *Policing Issues Survey* was used to measure the dependent variable (dependence on forfeiture) and two independent variables (incidence of federalized forfeitures and amounts received). Additional variables were measured from the two alternative data sources (state laws and LEMAS), all of which were merged with the *Policing Issues Survey* data set. The analysis of state laws was conducted in order to find state laws most conducive to dependence on civil asset forfeiture. The LEMAS survey was used to measure total fiscal expenditures and agency size.

The dependent variable, dependence on civil asset forfeiture, was coded on a five-point ordinal scale. This corresponds to the five potential responses to the statement: "Civil forfeiture is necessary as a budgetary supplement for my agency." (The ordered responses to this statement appear in Table 1 in the Results section.) In terms of the multivariate model of dependence on civil asset forfeiture, a logistic regression model capable of dealing with ordered dependent variable responses was employed. (The results for this model appear in Table 4.)

The independent variables were coded in two primary ways. First, the three categories of state laws (80 percent or more of proceeds to law enforcement; proceeds into a crime control fund; and sharing based on contribution) were coded as three separate dummy variables. The presence of one or other of these legal arrangements was coded with a one; zero served as the reference category.

All of the remaining independent variables were coded as continuous variables. The incidence of total

Table 1
Responses to statement: "Civil forfeiture is necessary as a budgetary supplement"

	Large agencies			Small agencies		
	Frequencies	Percent	Cumulative	Frequencies	Percent	Cumulative
Strongly disagree ^a	63	16.45	16.45	50	15.97	15.97
Disagree	65	16.97	33.42	71	22.68	38.66
Neutral	79	20.63	54.05	94	30.03	68.69
Agree	77	20.10	74.15	46	14.70	83.39
Strongly agree	99	25.85	100.00	52	16.61	100.00
Total	383 ^b	100.00	—	313 ^b	100.00	—

^a Pearson's chi-square = 17.8111; $P = .001$. Rows and columns are independent at the .001 level of significance.

^b Total number of responses with complete data (out of 417 large agencies and 353 small agencies).

seizures and the incidence of federalized seizures were count outcomes. Both included the incidence of total and federalized seizures for the past 3 years. The total forfeiture proceeds variable was measured by amounts in dollars and included the incidence of federalized seizures for the past 3 years. The total fiscal expenditure was measured in the same way — total amounts in dollars for fiscal year 1993. Finally, department size was a continuous variable representing the average number of sworn personnel in each of the responding agencies.

Results

The results of the analysis were summarized for presentation in three ways. First, evidence is offered that a substantial proportion of law enforcement executives is “addicted” to civil asset forfeiture. Second, the independent variables used to explain the “addiction” were summarized. Finally, a multivariate model of dependence on civil asset forfeiture is reported. This section concludes with a discussion of potential problems posed by multicollinearity in the multivariate analysis.

Addicted to the drug war

Table 1 reports on law enforcement executives’ perceptions of civil forfeiture as a *necessary* budgetary supplement. Fully 176 law enforcement supervisors agreed or strongly agreed that civil forfeiture is necessary as a budgetary supplement, almost 40 percent of all the responding agencies.

Table 1 also suggests that small law enforcement agencies are less likely to depend on civil asset forfeiture. Just over 31 percent of the small agencies agreed or strongly agreed that civil forfeiture is necessary as a budgetary supplement. Even so, whether the focus is on large or small agencies, an “addiction” is still apparent.

In short, a substantial proportion of law enforcement agencies reported that they are coming to *depend* on civil forfeiture. Such a finding gives some support to criticisms that pecuniary concerns may be motivating law enforcement to forfeit money and property tied to criminal activity. To the extent that most of the response were truthful, this represents a potential conflict of interest, seemingly confirming forfeiture critics’ worst fears.

Summary statistics: state law, forfeiture activities, and fiscal expenditures

Table 2 summarizes the three varieties of state laws used in the analysis. The frequencies reported in

Table 2

Prevalence of selected state laws governing the distribution of forfeited assets

	Large agencies		Small agencies	
	Frequencies	Percent	Frequencies	Percent
<i>Eighty percent or more to law enforcement^a</i>				
No	345	83.54	272	77.27
Yes	68	16.46	80	22.73
Total ^b	413	100.00	352	100.00
<i>Proceeds into crime control fund^c</i>				
No	402	97.34	337	95.74
Yes	11	2.66	15	4.26
Total	413	100.00	352	100.00
<i>Distribution based on contribution^d</i>				
No	360	87.17	312	88.64
Yes	53	12.83	40	11.36
Total	413	100.00	352	100.00

^a Two-way Pearson’s chi-square = 4.7055; $P = .030$. Rows and columns are independent at the .030 level of significance.

^b Total refers to the number of responses with complete data (out of 417 large agencies and 353 small agencies).

^c Two-way Pearson’s chi-square = 1.4625; $P = .227$. Rows and columns are not significantly independent.

^d Two-way Pearson’s chi-square = 0.3997; $P = .527$. Rows and columns are not significantly independent.

Table 2 are, again, for individual agencies. For example, 68 of the large agencies that responded were from states where forfeiture laws allowed a substantial proportion of forfeiture proceeds to go to law enforcement, a proportion equal to or greater than that which could be obtained by participating with federal officials in civil forfeiture actions. Only 11 agencies in the large agency sample were from states that require that forfeiture proceeds go into a crime control fund. Other agencies were able to receive forfeiture proceeds based on their contribution, but most common among the state laws governing the distribution of forfeited assets was the provision that 80 percent or more of the proceeds go to law enforcement.

A cursory examination of Table 2 suggests that there are no *significant* differences in state law by agency size. This is understandable, since the data reported in Table 2 are actually state-level data, specifically state laws governing the distribution of forfeited assets. Any number of large and small agencies can be found in each state throughout the union.

Table 3 reports on agency forfeiture activities and fiscal expenditures, specifically the incidence of federalized seizures, total proceeds received, and total fiscal expenditures. These were the other three independent variables believed to influence agencies’ dependence on civil asset forfeiture. Because

Table 3

Agency forfeiture activities and fiscal expenditures^a

Size/federalized seizures and dollar amount	Obs. ^b	Mean	S.D.	Min.	Max.
<i>Large agencies</i>					
Number of total seizures	413	179	390	0	4500
Number of federalized seizures	349	45	177	0	3000
Total proceeds received (US\$)	294	886,838	3,511,927	0	45,000,000
Total expenditures	413	3.06E+07	9.90E+07	129,742	1.70E+09
<i>Small agencies</i>					
Number of total seizures	352	18 ^c	30	0	300
Number of federalized seizures	297	2 ^d	5	0	60
Total proceeds received (US\$)	255	21,697 ^e	52,998	0	410,000
Total expenditures	352	2.95E+07 ^f	5.33E+08	4800	1.00E+10

^a The figures reported in this table are rounded off to the nearest whole number.^b "Obs." refers to observations, the number of cases with complete data for this variable. Observations reported are out of 417 large agencies and 353 small agencies that responded to the *Policing Issues Survey*.^c $t = -7.7638$; $P < .0000$. Small agencies participated in fewer total seizures than large agencies.^d $t = -4.1299$; $P < .0000$. Small agencies participated in fewer federalized seizures than large agencies.^e $t = -3.7512$; $P = .0002$. Small agencies received fewer total proceeds than large agencies.^f $t = -0.0435$; $P = .9653$. Small agencies' total fiscal expenditures do not differ significantly from large agencies' total fiscal expenditures.

these three variables are continuous, averages are reported instead of frequencies. Additionally, Table 3 includes minimums and maximums for each of the three variables.

Not surprisingly, the large agencies were more likely to receive forfeiture proceeds than small agencies. The t statistic reported in footnote c of Table 3 supports this observation; large agencies received approximately US\$887,000 from civil forfeiture, whereas small agencies only received an average of approximately US\$22,000. Much the same relationships held for the incidence of federalized seizures and total fiscal expenditures. On average, large agencies were more likely to participate in federalized seizures than small agencies. They also reported greater fiscal expenditures than small agencies.

Though not reported in Table 3, the mean size of the large agencies was 526 with a standard deviation of 1673.56. The low-end cutoff for large agencies was, of course, 100 sworn officers/deputies, but the largest of the agencies in the large agency sample was 31,000. The mean size of the small agencies was 22 with a standard deviation of 22.4. The smallest agency included in the small agency sample employed only one sworn officer/deputy. Agency size is an important control variable introduced in the multivariate model that follows.

Explaining the "addiction": a multivariate approach

Table 4 summarizes the logistic regression models of dependence on civil asset forfeiture. The

dependent variable was reported dependence on civil asset forfeiture. The independent variables were those variables believed (based on theory and intuition) to be associated with dependence on civil asset forfeiture.

The results reported in Table 4 are simultaneously comforting and disheartening. On the comforting side, the incidence of total seizures and the incidence of federalized seizures were not associated with dependence on civil asset forfeiture. This helps quell critics' (e.g., Blumenson & Nilsen, 1998) fears that federal agencies are meddling in the affairs of state and local law enforcement. Table 4 also suggests that state forfeiture laws have no statistically significant relationship to dependence on civil asset forfeiture. Thus, the law enforcement agencies that stand to benefit from state forfeiture laws are neither less nor more dependent on civil asset forfeiture as a tool to manage fiscal constraints. The relationships were in the hypothesized direction, however.

It also appears the agency size is not related to "addiction," but interestingly the logit coefficient suggests an inverse relationship. This would seem to indicate that larger agencies are less likely to rely on civil asset forfeiture, a logical conclusion since large agencies are more likely than small agencies to enjoy larger budgets. However, the presence of more crime in large jurisdictions would suggest an opposite effect.

Somewhat disheartening are the relationships between total proceeds received, total fiscal expenditures, and dependence on civil asset forfeiture. The highly significant relationship between total proceeds

Table 4

Logistic regression models of dependence on civil asset forfeiture

	Large agencies ($n=363$) ^a		Small agencies ($n=298$) ^a	
	Logit	Odds	Logit	Odds
Total seizures ^b	– 0.0000 (0.004)	0.9999 (0.0004)	0.0041 (0.0051)	1.0041 (0.0051)
Federalized seizures	– 0.0007 (0.0022)	0.9992 (0.0022)	– 0.0077 (0.0174)	0.9923 (0.0172)
Total proceeds received ^c	8.44E – 07 ** (2.51E – 07)	1.0000 ** (2.51E – 07)	2.01E – 06 ** (5.93E – 07)	1.0000 ** (5.93E – 07)
Total fiscal expenditures ^c	– 1.04E – 08 * (5.04E – 09)	1.0000 * (5.04E – 09)	8.05E – 10 (3.63E – 09)	1.0000 (3.63E – 09)
Eighty percent or more to law enforcement	0.3412 (0.3023)	1.4066 (0.4252)	– 0.0415 (0.3149)	0.9593 (0.3021)
Crime control fund	0.5792 (0.6891)	1.7845 (1.2297)	0.1578 (0.6826)	1.1710 (0.7993)
Based on contribution	0.5226 (0.3214)	1.6864 (0.5421)	0.0274 (0.4146)	1.0278 (0.4262)
Agency size	– 0.0003 (0.0013)	0.9997 (0.0012)	0.0878 (0.0553)	1.0918 (0.0603)
Constant	– 0.4160	–	– 1.2873	–
Log likelihood	– 237.7430		– 177.9106	
– 2 ln <i>L</i> chi-square	26.74		21.67	
Probability > chi-square	.0008		.0056	
Goodness of fit chi-square	375.79		297.08	
Probability > chi-square	.2039		.3438	

^a *n* refers to the number of agencies with complete data on all variables of interest.^b Coefficients are close to zero and odds close to one because the units of measurement are small (individual counts of the number of total seizures and federalized seizures).^c Coefficients are close to zero and odds close to one because the units of measurement are small (amounts in dollars).* $P < .05$.** $P < .01$.

received and dependence on civil forfeiture suggests, reasonably enough, that the agencies that not only engaged in comparatively more civil asset forfeitures, but also received generous revenues from such activities, throughout the past 3 years, came to depend on the practice more readily. That is, the more certain law enforcement agencies received in the way of forfeiture proceeds, the more likely they were to depend on such revenues. This was the case for both the large and small agency models.

Similarly, the total fiscal expenditure variable was significant. It was also in the hypothesized direction, but only for the larger agencies. Large agencies (those with 100 or more sworn personnel) with greater fiscal expenditures were *less* likely to depend on civil asset forfeiture. This relationship suggests that law enforcement agencies have stumbled upon a creative solution to the fiscal constraints that continue to plague public agencies. At the least, this poses some conflict of interest problems.

It should be noted that the relationships reported in Table 4 are not due to chance. For example, the model chi-square statistics for both the large and small agency models were both significant ($P=.0004$ and $P=.0038$, respectively). The goodness of fit chi-squares reported at the bottom of Table 4 also suggest that both models fit the data relatively well (.2178 and .3681, respectively).

A note concerning multicollinearity

Multicollinearity, or too-high intercorrelations among *X* variables, can cause trouble. Specifically, it leads to unreliable coefficient estimates and large standard errors (Hamilton, 1992). This is important because the incidence of seizures, whether overall or federal, can be expected to correlate with the amount of forfeiture proceeds received by particular law enforcement agencies. Accordingly, steps were taken to ensure that multicollinearity was not a serious problem in the multivariate model reported in the previous section.

There are several methods for diagnosing multicollinearity, two of which were employed in the research reported here. First, a matrix of correlations among *X* variables was constructed. Table 5 includes the pairwise correlations among the regressors. According to Gujarati (1995, p. 335), "... if the pair-wise or zero-order correlation coefficient between two regressors is high, say, in excess of .8, then multicollinearity is a serious problem." Two pairwise correlations broke the .8 threshold, thereby indicating relatively high multicollinearity. These were the correlations between total proceeds and federalized seizures and agency size and total fiscal expenditures. These high correlations would seem to call the multivariate results into question. However,

Table 5

Correlation matrix of continuous *X* variables^a

	Total seizures	Federalized seizures	Total proceeds	Total fiscal expenditure	Agency size
Total seizures	1.000				
Federalized seizures	.6496	1.000			
Total proceeds	.6829	.8512	1.000		
Total fiscal expenditures	.1257	.1461	.1659	1.000	
Agency size	.5728	.7282	.8547	.1793	1.000

^a Three variables (80 percent to law enforcement, crime control fund, and based on contribution) were excluded from this table because they were coded as dummy variables.

the correlation matrix method has been deemed fallible for various reasons (Hamilton, 1992, p. 133; Gujarati, 1995, pp. 335–336).

An alternative technique for diagnosing multicollinearity makes use of auxiliary regressions. This involves regressing each *X* variable on all the other *X* variables and examining the resulting R^2 values. The resulting R^2 values are then subtracted from one to yield a “tolerance” estimate (Hamilton, 1992). With perfect multicollinearity, tolerance equals zero and regression is not possible. Low tolerance, according to Hamilton (1992), that is, tolerance below .2 or .1, “. . . does not prevent regression but makes the results less stable.”

Table 6 reports the tolerance estimates for the continuous independent variables. The tolerance of each variable, also known as the independent variation, is reported in the second column of Table 6. Only one of the continuous variables demonstrates low tolerance: federalized seizures. Accordingly, the coefficients on federalized seizures in the multivariate results section should be viewed with some caution. Indeed, *all* coefficients in the multivariate “addiction” model should be viewed in this fashion, especially because many of the “cures” for multicollinearity were not suitable in light of the research design. For example, dropping selected variables, a common remedial measure taken in the presence of multicollinearity, would have left theoretically important variables out of the multivariate model.

Table 6

Tolerances of continuous *X* variables^a

Variable	Shared variation	Independent variation
Total seizures	.4864	.5136
Federalized seizures	.8544	.1456
Total proceeds	.7339	.2661
Total fiscal expenditures	.0340	.9660
Agency size	.7325	.2675

^a Three variables (80 percent to law enforcement, crime control fund, and based on contribution) were excluded from this table because they were coded as dummy variables.

Similarly, data transformations, attempts to gather new data, polynomial regressions, and other techniques (see Gujarati, 1995 for a review) were not viable alternatives.⁵

Summary, conclusions, and implications

This article has offered evidence that a substantial proportion of law enforcement agencies, particularly municipal police departments and county sheriff’s agencies, are dependent on the revenue generated from civil asset forfeiture. I then attempted to explain dependence on civil asset forfeiture in terms of three primary factors: (1) fiscal expenditures; (2) past experiences with forfeiture; and (3) state regulations governing the disposition and distribution of forfeited assets. Multivariate tests of these and other explanations for “addiction” suggested that fiscal expenditures were inversely related to dependence on civil asset forfeiture, but only for large agencies. The results also indicated that past forfeiture experiences, namely total proceeds received, were also associated with dependence on civil asset forfeiture, but in the positive direction. The incidence of total seizures, the incidence of federalized seizures, state law, and agency size were not significantly related to “addiction.”

The most important finding reported in this article is that many law enforcement agencies are dependent on civil asset forfeiture. Of course, this was not the case for all agencies, or even for the majority, and cross-sectional data cannot reveal trends over time, but nearly 40 percent of the large agency sample reported that forfeiture is *necessary* as a budgetary supplement. The 40 percent figure was for 1998, and could very well be dynamic and changing in either a positive or negative direction, but the results nevertheless seem to confirm forfeiture critics’ (e.g., Hyde, 1995; Levy, 1996) worst fears. If law enforcement is “in it for the money,” which some agencies clearly are (see Miller & Selva, 1994), then it is difficult to see how the “war on

drugs” can ever be won. (Of course, given law enforcement’s minimal success in the “war on drugs,” it is quite possible the “war” can never be one, even if profit is not a consideration.)

Taking this idea one step further, the notion that law enforcement is coming to depend on civil asset forfeiture lends support to perspectives such as Reiman’s (1995) Pyrrhic defeat theory, namely that the criminal justice system is designed to fail. It could be that law enforcement has a vested interest in there being a drug problem because of the money and resources that stand to be gained. Of course, there is no way to support this statement, and such an eventuality is as implausible as it is radical, but the “policing for profit” notion is nevertheless intriguing. Nils Christie’s (1993) view of crime control as industry also sheds light on the findings reported here. As Christie (p. 14) states, the crime control industry “. . . provides *profit and work* while at the same time producing control of those who otherwise might have disturbed the social process” (emphasis added).

The second most important finding from the research reported here is that past experiences with civil asset forfeiture and fiscal expenditures were associated with “addiction.” Of course, these two variables do not fully *explain* dependence on civil asset forfeiture, but it would seem that conflict of interest problems are present in the way civil forfeiture is currently being carried out. Insofar as fiscal expenditures are inversely related to dependence on civil asset forfeiture, it is plausible to conclude that crime control is not the *only* goal among contemporary law enforcement agencies. Organizational survival and fiscal stability are also important considerations.

The finding that past experiences with forfeiture are tied to dependence has important implications. Aside from conflict of interest concerns, this finding helps explain why the CAFRA was tied up in Congress for so long. Numerous forfeiture reform proposals were continually been beaten down by the law enforcement lobby, particularly the International Association of Chiefs of Police, the Fraternal Order of Police, and the Department of Justice. The struggle may have occurred because of law enforcement’s apparent dependence on civil asset forfeiture, and because law enforcement officials saw the potential to lose a significant proportion of the revenue generated from civil asset forfeiture.

It is possible that CAFRA’s requirement that the burden of proof shift to the state may now improve things, but since the law does not require that forfeiture proceeds be diverted into a general fund, then the revenues generated from civil asset forfeiture will, in all likelihood, remain substantial. Regardless of what legislative changes have

occurred, law enforcement agencies (and, to an extent, prosecutors’ offices) enjoy a source of revenue that is not available to other public agencies. Any proposed changes to *this* arrangement are likely to confront serious opposition.

Much research remains to be done. Asset forfeiture has been scrutinized on constitutional and procedural grounds, but most research on forfeiture has not been empirical. The handful of empirical studies on civil asset forfeiture (this article included) could be starting points for future research. A host of questions remain, some of which include: What determines forfeitures?; What are the theories and motivations behind forfeiture?; Is forfeiture an effective crime control policy?; and, Are the police, in an attempt to generate money from civil forfeiture, violating people’s civil rights? An answer to the latter question could lend additional support to the findings reported here. Other questions include: Is there a time dimension to dependence on civil asset forfeiture?; Is law enforcement really “addicted” to the drug war?; and, Is the “addiction” growing? If so, what can be done to ensure conflict of interest problems do not become more serious?

In closing, the research reported here has substantiated *some* of the concerns raised by civil forfeiture’s most ardent critics. Despite noble intentions to strike at the economic foundations of the illicit drug trade, many law enforcement agencies are coming to depend on civil asset forfeiture. Moreover, past experiences and fiscal constraints are intimately tied to that dependence. The most profound consequence of this is that, depending on such variables as leadership philosophy and location, civil asset forfeiture can provide an opportunity for law enforcement officials to behave unethically, circumvent constitutional protections, and act in self-interest rather than in the interest of crime control or public safety.

Despite a number of past and current reform proposals, and despite the heated debate that asset forfeiture inspires, law enforcement’s “double-edged sword” (Miller & Selva, 1994) is here to stay. It also appears that equitable sharing will survive well into the future. Given the fact that law enforcement agencies will continue to be able to reap the benefits from civil asset forfeiture, then steps should be taken to ensure that the “addiction” is not irreversible.

Acknowledgments

An earlier version of this article was presented at the 1999 American Society of Criminology Meeting in Toronto.

Appendix A. Percentage of proceeds going to law enforcement: state law categories and relevant statutory citations⁶

<i>State</i>	
Alabama	5 [Ala. Code § 20-2-93(e) (1990)]
Alaska	9 [Alas. Stat. § 17.30.122 (1996)]
Arizona	7 [Ariz. Rev. Stat. Ann. § 13-4315 (1997)]
Arkansas	6 [Ark. Stat. Ann. § 5-64-505(k) (1993)]
California	3 [Cal. Health and Safety Code § 11489(a)(2)(A) (1997)]
Colorado	3 [Colo. Rev. Stat. Ann. § 1613-506 (1997)]
Connecticut	3 [Conn. Gen. Stat. Ann. §§ 54-36h(f), 54-36i(c) (1997)]
Delaware	1 (100 percent) [16 Del. Code Ann. § 4784(f)(3) (1995)]
District of Columbia	1 (100 percent) [D.C. Code Ann. § 33-552(d)(4)(B) (1993)]
Florida	11 (depends on agency; not for operating expenditures) [Fla. Stat. Ann. § 932.7055(3)–(6) (1996)]
Georgia	6 [Ga. Code Ann. § 16-13-49(u)(4)(B) (1996)]
Hawaii	4 [Haw. Rev. Stat. § 712A-16(2)(a) (1993)]
Idaho	1 (100 percent) [Ida. Code § 37-2744(e)(2)(C) (1994)]
Illinois	11 (depends on particular statute) [ILCS ch. 720 §§ 550/12(g), 570/505(g) (1997); ILCS ch. 725 § 175/5(g)–(h) (1997)]
Indiana	8 [Ind. Code Ann. § 16-42-20-5(e) (1997)]
Iowa	8 (no discussion of distribution) [Io. Code Ann. §§ 809A.16-809A.17 (1997)]
Kansas	1 (100 percent) [Kan. Stat. Ann. § 60-4117(c)–(d) (1994)]
Kentucky	11 (depends on type of property) [Ky. Rev. Stat. Ann. § 218A.435 (1995)]
Louisiana	3 [La. Rev. Stat. Ann. § 32:1550(k)(1) (1989)]
Maine	10 [Me. Rev. Stat. Ann. § 5821 (Supp. 1996)]
Maryland	1 (100 percent) [Md. Crimes and Punishment Code Ann. §§ 297(f), 297(k)(3)(v) (1996)]
Massachusetts	3 [Mass. Ann. Laws ch. 94C, § 47(d) (1995)]
Michigan	1 (100 percent) [Mich. Comp. Laws Ann. § 333.7524 (1997)]
Minnesota	3 [Minn. Stat. Ann. § 609.5315(5) (1997)]
Mississippi	1 (80 percent) [Miss. Code § 41-29-181(2) (Supp. 1997)]
Missouri	9 [Mo. Const., Art. IX, § 7; Mo. Ann. Stat. § 513.623 (Supp. 1997)]
Montana	1 (100 percent) [Mont. Code Ann. § 44-12-206 (1995)]
Nebraska	7 (50 percent only) [Neb. Rev. Stat. §§ 28-431(4), 28-1439.02 (1995)]
Nevada	1 (100 percent, but not for normal operating expenditures) [Nev. Rev. Stat. § 179.1187(2) (1995)]
New Hampshire	4 [N.H. Rev. Stat. Ann. § 318-B:17-b(v)(a)(1) (1995)]
New Jersey	6 [N.J. Stat. Ann. § 2C:64-6(a) (1995)]
New Mexico	0 [N.M. Stat. Ann. § 30-31-35(E), § 22-8-32(A)(1) (1978 and Supp. 1992, 1997)]
New York	11 (40 percent to drug fund; 75 percent of remaining balance to participating agency) [N.Y. Laws 1349(h)(i)]
North Carolina	0 [N.C. Const., Art. IX, § 7; N.C. Gen. Stat. § 90-112(d)(1) (1993)]
North Dakota	2 (100 percent up to US\$500,000) [N.Dak. Cent. Code §§ 19-03.1-36(5)(b), 54-12-14 (1997)]
Ohio	1 (100 percent) [O. Rev. Code Ann. §§ 2933.43(D)(1)(c), 2925.43(B)(4)(c), 2925.44(B)(8)(c) (1992)]
Oklahoma	1 (100 percent, but only for enforcing controlled substance laws) [Okla. Stat. Ann. §§ 2503(D)–(F), 2-506(L)(3) (1997)]
Oregon	1 (100 percent, but only for enforcing controlled substance laws) [Ore. Rev. Stat. Notes Preceding ORS 166.05 §§ 10(1)(c)–11(b)(1)(b) (1995)]

Appendix A. (continued)

<i>State</i>	
Pennsylvania	11 (shared by D.A. and Attorney General) [Pa. Cons. Stat. Ann. § 6801(f)–(h) (1997)]
Rhode Island	6 [R.I. Gen. Laws § 2128-5.04(b)(3)(A)(i) (Supp. 1996)]
South Carolina	3 [S.C. Code Ann. § 44-53-530(e) (Supp. 1996)]
South Dakota	7 [S.Dak. Code Laws § 34-20B-89(2) (1994)]
Tennessee	11 (depends on type of property) [Tenn. Code Ann. §§ 53-11-451(d)(4), 5311-452(h)(2)(A) (1991 and Supp. 1996)]
Texas	11 (based on agreement between state and local officials) [Tex. Crim. Pro. Code Ann. § 59.06(a)–(d), (h) (Supp. 1997)]
Utah	1 (100 percent, but only for enforcing controlled substance laws) [Ut. Code Ann. § 5837-13(8)(a) (1997)]
Vermont	9 [18 Vt. Stat. Ann. §§ 4244(d), 4247 (Supp. 1996)]
Virginia	6 [Va. Code § 19.2-386.14(AB) (1995)]
Washington	1 (100 percent, but only for enforcing controlled substance laws) [Wash. Rev. Code Ann. §§ 7.43.100, 43.10.270, 69.50.505(f)(i) (1992 and Supp. 1997)]
West Virginia	10 [W.Va. Code § 60A-4-403a(g) (1992)]
Wisconsin	3 [Wis. Stat. Ann. § 961.55(5)(b) (Supp. 1997)]
Wyoming	9 [Wyo. Stat. § 35-7-1049(e)–(j) (Supp. 1996)]
<i>Key</i>	
0 = none	
1 = 80 percent or more	
2 = 80 percent or more with restrictions	
3 = less than 80 percent, but more than 0	
4 = less than 80 percent, but more than 0 with restrictions	
5 = based on contribution	
6 = based on contribution with restrictions	
7 = paid into state/general law enforcement fund (e.g., antiracketeering fund)	
8 = paid into nonlaw enforcement fund (e.g., school fund) or general fund	
9 = left to discretion of some official with or without restrictions	
10 = law does not specify	
11 = other	

Notes

1. Interestingly, the President's Commission failed to notice that most of the proceeds obtained from civil asset forfeiture go to law enforcement, not "society."

2. The Comprehensive Drug Abuse Prevention and Control Act of 1970 provided, in relevant part, for the forfeiture of "... equipment ... [and] property which is used, or is intended for use ... in any manner to facilitate the transportation, sale, receipt, possession, or concealment [of controlled substances]" [21 U.S.C. § 881(a) (1988 and Supp. IV 1992)]. The act was amended in 1978, providing for the forfeiture of "[a]ll moneys ... or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance ..." [21 U.S.C. § 881(a)(6) (1988)]. In 1984, the act was further amended (or broadened) to provide for the forfeiture of "[a]ll real property ... which is used, or intended to be used, in any manner or part, to commit, or

to facilitate the commission of a violation" [21 U.S.C. § 881(a)(7) (1988)].

3. Although sheriffs and chiefs were asked to complete the survey, it was clear in some instances that a subordinate completed the survey.

4. It is possible that some agencies had an incentive to claim that they were dependent on civil forfeiture, perhaps not wishing to lose future revenues.

5. It has been said that if the goal of regression is prediction, then multicollinearity may not be a serious problem (see Geary, 1963).

6. Categories 1,2,5,6, and 7 were used in the analysis. The remaining categories were not used in the analysis either because the percentages going to law enforcement are relatively small or because there is no guarantee that *any* proceeds go to law enforcement. Categories 1 and 2 were used to construct the dummy variable specifying that 80 percent or more of proceeds go to law enforcement. Categories 5 and 6 were used to construct the dummy

variable specifying that proceeds are based on contribution. Category 7 represents the third dummy variable.

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