PERFORMANCE AUDIT

Office of the Washington State Auditor
Pat McCarthy

Civil Asset Forfeiture:

Strengthening transparency and protections for property owners

April 11, 2024

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Executive Summary

State Auditor's Conclusions (page 46)

Our public discourse often features one-dimensional views of complex issues like preventing crime and ensuring transparency and accountability in our system of law enforcement. This report, however, brings two of an auditor's most powerful tools, independence and fact-based analysis, to review our system of civil asset forfeiture.

We found that police agencies are following the law in seizing property suspected of being involved in a crime. We also found that Washington's civil asset forfeiture system disproportionately affects some groups, and does not include the same legal checks and balances found in some other areas of our justice system.

For example, one of the goals of civil asset forfeiture is to disrupt large criminal organizations such as cartels. We found that most forfeiture cases involved small amounts of cash and low-value goods. In some communities, certain demographic groups faced civil asset forfeiture at significantly higher rates compared to their presence in the local population overall. And across the state, the law permits the same police agency that seized the property to determine whether there is sufficient evidence to retain that property.

I would emphasize the theme of transparency in our recommendations. They include such concrete steps as helping people better understand their right to challenge forfeiture by communicating in languages other than English. And we recommend the Legislature convene a workgroup to consider broader improvements to the system, such as establishing guidelines for statewide reporting of forfeiture activity.

I believe that we in Washington have demonstrated that government transparency can improve public programs without compromising those programs' goals. This audit shows that greater transparency, as well as other changes we have outlined, can help our state continue to disrupt wrongdoing by seizing the material elements of crime, while also protecting every Washingtonian's right to due process.

A Primer on Civil Asset Forfeiture (page 7)

Civil asset forfeiture is a legal tool that allows the government to seize property that law enforcement officers believe has been involved in or is the proceeds of a crime. The law allows officers to seize property without securing an arrest, charge or criminal conviction of the property owner. Technically, civil asset forfeiture

is a lawsuit brought by the police agency against the property itself. In law, the inanimate object – be it car, cash or gun – is the defendant, which means the property owner is only an "interested party" to the suit and thus not provided an attorney in efforts to regain the seized items. When an interested party does not file a claim or does not prevail on a claim to regain their property, the law allows the police agency to retain or destroy the property.

Background (page 14)

The practice of civil asset forfeiture in Washington has raised concerns. For this audit's review period – January 2020 through December 2022 – more than 100 of the state's 250 police agencies reported receiving nearly $40 million from local, state, and federal forfeitures. Legislators and other stakeholders expressed concerns about the lack of transparency regarding civil asset forfeiture activity, which they said limits the state's ability to evaluate program effectiveness and inform policy. Additionally, legislators and other stakeholders expressed concerns that civil asset forfeiture may deprive people of their property without sufficient due process.

Civil asset forfeiture for the audited agencies typically involved property of low value and disproportionately affected some racial and ethnic groups (page 20)

Most audited agencies used civil asset forfeiture primarily to seize cash and other property associated with small-scale illegal activity. The property seized was often of relatively low value, due in part to the nature of common circumstances for seizure. Police agencies might also seize property of low value because neither state law nor internal policies forbid doing so. In some communities, certain demographic groups faced civil asset forfeiture at significantly higher rates compared to their presence in the local population overall. Staff at audited agencies, experts and attorneys offered insights as to why forfeiture affects some groups more than others. The audit found that most people involved in a forfeiture with audited agencies were not convicted of a related crime.

The state's civil asset forfeiture law gives police broad authority and few protections to property owners (page 30)

Washington's low standard of evidence makes it easier for police to prevail in civil forfeiture cases. Owners must file a claim to regain seized property, which gives them an opportunity to present evidence concerning its innocence. State law allows the same police agency that seized property to decide the forfeiture case, an apparent conflict of interest. The audited police agencies made the final decision to forfeit property in most of the cases we reviewed. Property owners did not have their case decided by a court in any reviewed cases, even though this is an option in state law. Other states have addressed conflict of interest concerns by dissociating seizure from forfeiture decisions.

The audited agencies retained or disposed of most property automatically because no one filed a claim for its return. Defense attorneys offered many reasons why people might not file a claim. These include: reclaiming the property is not cost effective, owners did not receive notice of the forfeiture, and language barriers to understanding the notice, which can be compounded by the short window to file a claim. Required attendance at multiple hearings can also present barriers. Agency officials also offered potential reasons. They said people may not file a claim because they are reluctant to engage with the police or because they may be guilty of drug-related crimes.

As state law allows, police agencies retained 90 percent of the proceeds from forfeited property. Stakeholders have raised concerns that this practice creates a financial incentive for seizing property for forfeiture. Redirecting some or all funds to neutral accounts might address concerns around financial incentives. Some states have also taken steps to decrease police participation in the federal Equitable Sharing Program.

Audited agencies followed requirements of state law, but could do more to help people receive notice and understand how to reclaim property (page 38)

Agencies followed state laws around procedural due process for people involved in civil asset forfeitures. However, experts recommend additional practices to provide adequate civil protections to property owners, which only a few agencies had implemented. For example, some agencies did not use practices that help ensure property owners receive the forfeiture notice. Few agencies had

implemented practices for their written notices that could help address problems of comprehension. Audited agencies also generally lacked staff guidance about ensuring notices are successfully delivered and easily understood.

State law does not require police agencies to collect some key data on civil asset forfeiture nor make the data they do collect available online

(page 44)

Stakeholder concerns about transparency could be addressed by introducing reporting requirements to state law. Leading practices and examples from other states could offer Washington a path to greater transparency.

Recommendations (page 47)

We made recommendations to the audited police agencies to help improve the chances that people receive notice of the police's intent to forfeit their property and understand what they can do to reclaim the property. We also recommended the Legislature convene a workgroup that will address issues with civil asset forfeiture in Washington. Topics for the workgroup to examine include: the conflict of interest apparent in civil asset forfeiture decisions, the potential financial incentive in pursuing forfeitures, the lack of transparency about civil asset forfeiture activity, and ways to increase safeguards for property owners facing civil asset forfeiture.

Next steps

Our performance audits of state programs and services are reviewed by the Joint Legislative Audit and Review Committee (JLARC) and/or by other legislative committees whose members wish to consider findings and recommendations on specific topics. Representatives of the Office of the State Auditor will review this audit with JLARC's Initiative 900 Subcommittee in Olympia. The public will have the opportunity to comment at this hearing. Please check the JLARC website for the exact date, time, and location (www.leg.wa.gov/JLARC). The Office conducts periodic follow-up evaluations to assess the status of recommendations and may conduct follow-up audits at its discretion. See **Appendix A**, which addresses the I-900 areas covered in the audit. **Appendix B** contains information about our methodology.

A Primer on Civil Asset Forfeiture

What is civil asset forfeiture?

Civil asset forfeiture is a legal tool that allows the government to seize property that law enforcement officers believe has been involved in or is the proceeds of a crime. The law allows officers to seize property without securing an arrest, charge or criminal conviction of the property owner. Technically, civil asset forfeiture is a lawsuit brought by the police agency against the property itself. In law, the inanimate object – be it car, cash or gun – is the defendant, which means the property owner is only an "interested party" to the suit and thus not provided counsel or an attorney in efforts to regain the seized items. When an interested party does not file a claim or does not prevail on a claim to regain their property, the law allows the police agency to retain or destroy the property.

This report uses the terms:

- *Police* or *police agency* to refer to the various types of law enforcement agencies that conduct civil asset forfeitures, including police departments, sheriff's offices and drug task forces.
- *Seize* to describe police confiscation of private property.
- *Retain* to describe the situation in which police retain possession of seized property, or the proceeds from its sale, after a successful civil forfeiture case. The term *forfeit* is often used in legal settings as a synonym for "retain" or "keep."

In civil asset forfeiture cases, police must show – usually to an administrator, not a trial judge and jury – that the property was involved in or is the proceeds of a crime. Other standards apply in different situations, but as a civil case, police do not have to prove that the property owner was guilty of committing the suspected crime. However, unlike a criminal trial in which defendants have no obligation to prove their innocence, in a civil forfeiture process property owners must file a claim, which gives them an opportunity to present evidence to show that they obtained the seized property through legal and legitimate means to improve the chances of getting it back.

Police officers can identify property that is subject to seizure under the law in various ways. Among the most common situations are during traffic stops or when investigating suspected scenes of criminal activity such as drug manufacture or dealing, and by searching vehicles at border crossings and travelers' bags at the airport.

Once police have seized property they have probable cause to believe was involved in illegal activity, the owner must file a claim with that agency for its return. If the owner does not file a claim for the property before the given deadline, the police can consider the property forfeited by the owner and may

keep or dispose of it according to federal, state or local laws. The seized property is sometimes sold at auction, with the majority of proceeds – as well as any seized cash – directed to the police agency that conducted the initial seizure.

This primer describes key areas for understanding the work in this audit:

- The law's intent and goals over time
- The differences between asset forfeiture processes, including criminal proceedings
- An overview of state compared to federal actions
- Current views and concerns around the civil asset forfeiture process nationally

The Background section of this report discusses the situation in Washington, including local concerns that prompted the Office of the Washington State Auditor to conduct this performance audit.

The intent of civil asset forfeiture has evolved over time

Civil asset forfeiture has existed since the early days of the United States, but its purpose has changed over time. As a legal procedure to treat property as the "guilty party," it has its roots in 17th century British maritime law, which allowed the government to seize ships and cargo from people who had evaded paying customs duties. The value of the seized ship and its untariffed cargo effectively compensated the government for the price of the custom duty – and could prevent the now-shipless owner from trying to avoid paying the duty in the future.

Hundreds of years later, in the 1920s and 1930s, America found itself searching for methods to control the illegal liquor inundating the country during Prohibition. Criminals had become ever more sophisticated, organizing into "syndicates" across state and international lines. Their cash-only takings were often laundered through obliging banks into business and property ventures that appeared legitimate. In seeking a way to disrupt the smoothly functioning trade in illegal alcohol and break up these criminal syndicates, the government turned to civil asset forfeiture. It used the technique to seize buildings used to distill or store alcohol, vessels and vehicles used to transport it, guns used in robberies or murders, and the cash that underpinned the entire enterprise.

In the early 1970s, public attention centered on drug abuse. As part of his "War on Drugs," President Nixon created the Drug Enforcement Administration in 1972; in the 1980s, President Reagan reinforced and expanded many of his predecessor's policies. At this time, federal, state and local law enforcement agencies increasingly turned to civil asset forfeiture as an appropriate tool to target new types of criminal

organizations such as drug cartels and large-scale distributors. These criminals had come to prefer cash as it was becoming harder to launder money through legitimate financial systems.

The groundwork for modern civil asset forfeiture was laid in 1984 with the passage of the Comprehensive Crime Control Act, which gave police the authority to seize any property related to drug crimes and to retain what had been seized. This law also permitted local and federal law enforcement agencies to share the proceeds of seized assets.

Most states use civil asset forfeiture with the intent of deterring crime. Police agencies and the federal government view it as a critical tool to disrupt criminal organizations by confiscating the assets associated with illegal activities. It also allows them to apply the funds derived from the forfeiture to further disrupt criminal activity. They also view it as an essential strategy in preventing the distribution of dangerous and controlled substances that contribute to public health crises that harm communities.

While police agencies have mainly used civil asset forfeitures in drug-related cases, the process can be used in other cases including those that involve money laundering or human trafficking.

Asset forfeitures can happen through an administrative, judicial or criminal proceeding, depending on the laws of each state

Civil asset forfeitures can be conducted through either administrative or judicial processes. The main difference between these two legal procedures lies in who decides that the property is eligible for forfeiture. In an administrative proceeding, a hearing officer decides whether the forfeiture was sufficiently justified. In a judicial proceeding, a judge hears evidence from both the police and the property owner before deciding whether the police have sufficient evidence to retain the property.

In criminal asset forfeiture, police seize property and bring a case against the owner of the property – not the property itself. Unlike administrative and judicial proceedings, the government cannot retain the property without first convicting the owner of a crime and proving that the property was connected to the crime. Property that is seized in a criminal case becomes evidence and may be forfeited as part of the defendant's sentence.

Administrative proceedings are the more common approach to modern civil forfeitures, according to research conducted by the Institute for Justice, a public interest law firm that focuses on research, litigation, legislation and advocacy for a variety of issues. For example, it found that the U.S. Department of Justice

conducted 73 percent of its forfeitures administratively from 2000 to 2019. Similarly, Minnesota (one of the few states that tracks data on types of forfeitures statewide), conducted 76 percent of its forfeitures administratively from 2010 to 2018.

Most states pursue civil asset forfeitures, but their policies vary

States vary in how they manage four important aspects of civil asset forfeiture:

- Procedures of due process police must follow to ensure property owners are treated fairly
- The level of evidence police agencies must provide to demonstrate the forfeiture was justified
- Who bears the burden of proof
- Who receives what proportion of the proceeds from the sale of property

States can vary in the procedural due process they provide to people facing civil asset forfeiture. Some states specify the number of days the police have to notify the property owner of the agency's intent to retain the seized property, other states do not. Some states allow more time than others for the property owner to file a claim for the return of their property. States vary in who makes the decision to forfeit property. In some, the same agency that seized the property makes the forfeiture decision; in others, a court makes the decision.

States also vary in the degree of proof law enforcement must provide to justify seizing and retaining property. For example, some states require that the police provide evidence that shows it is more likely than not the property was involved in or arose from criminal activity. This is known as a "preponderance of the evidence" standard. Other states require a higher standard of evidence, such as "clear and convincing evidence" or "proof beyond a reasonable doubt." Some states place the burden of proof on the property owner, who must show that property was not associated with a crime, while other states have developed "innocent owner" protections; these are meant to protect people whose property was used to commit a crime without their knowledge. Lastly, many states allow police agencies to retain all or a significant portion of the money arising from forfeitures. A few states have decided to use such money to benefit other governmental goals, such as educational or crime victims' programs, by requiring that most or all proceeds from forfeitures be directed toward general government accounts outside the control of police. However, such state laws are not necessarily the last word in how funds associated with federal forfeitures are distributed, as discussed on the following pages.

The federal government also plays a significant role in civil asset forfeiture

Federal agencies, including the U.S. Department of Justice, also conduct civil asset forfeitures. According to the Department of Justice, the purpose of federal forfeitures is to combat the most sophisticated criminal actors and organizations including fraudsters, human traffickers, drug cartels and cybercriminals. Federal agencies can seize assets such as houses and vacant land, vehicles, aircraft and boats, cash and firearms. The Department of Justice provides guidance on forfeitures to other federal agencies including the Drug Enforcement Administration, the U.S. Marshals Service and the U.S. Attorney's Office.

The Department of Justice's guidance for federal agencies conducting forfeitures established minimum dollar values for the property federal agencies can seize. The purpose for doing so is to ensure agents and prosecutors focus on the quality of the cases they pursue, including the value of property and what will effectively deter crime. For example, cash forfeitures must be at least $5,000, while vehicle forfeitures must have a net value of at least $10,000. According to the Department of Justice, minimum thresholds are intended to decrease the number of cases in which the federal agency seizes low-value property, enhance efforts to improve case quality, and expedite processing of the cases federal agencies do initiate.

The federal Equitable Sharing Program can circumvent state laws concerning funds from forfeitures

The federal government partners with local police agencies in all 50 states and Washington, D.C., to conduct forfeitures through the Equitable Sharing Program. Local police agencies that cooperate with a federal agency in an investigation or prosecution that results in forfeitures are eligible to receive up to 80 percent of the forfeiture proceeds resulting from these jointly conducted operations. This is possible even in states that have curtailed the ability of police agencies to conduct civil asset forfeitures altogether or retain significant portions of forfeited funds. Because the property seized in these circumstances becomes property of the federal government, state laws on civil asset forfeitures do not apply. In fiscal year 2022, the federal government's equitable sharing payments to states totaled $230 million.

The practice of civil asset forfeiture has raised criticism and concerns at the national level, prompting some reforms

While police agencies use civil asset forfeitures because they view it as a necessary tool to disrupt criminal activity, opponents argue that the civil asset forfeiture process is flawed and does not adequately protect property owners.

The Fifth Amendment to the Constitution provides that "no person shall… be deprived of life, liberty, or property, without due process of law." A primary criticism is that civil asset forfeiture violates due process for the "interested party" – the person who owns the property that is the subject of a forfeiture suit. By treating property owners as bystanders to the seizure, people lack some of the constitutional rights they would have in a criminal case before they are deprived of their property.

Additional rights that do not apply in civil asset forfeiture include the right to have an attorney provided if a person cannot afford one, the right to protect oneself against self-incrimination, and the presumption of innocence until proven guilty. To the contrary, a person must pay upfront for any legal help they need to reclaim their property, unless an attorney agrees to waive charges if they lose the case. Anything a person says in a civil asset forfeiture case could be used in any future related criminal case, should the government decide to pursue one. Additionally, in many states, property owners claiming they did not know the item was used in criminal activity must demonstrate they did not know about it in order to retrieve their property.

To the question of presuming the property "innocent until proven guilty," civil and legal nonprofit organizations such as the American Civil Liberties Union and the Institute for Justice have criticized the low standard of evidence required to justify the seizure and forfeiture of property. The standard in many states is "preponderance of the evidence" – this is low compared to criminal cases, which require proof beyond a reasonable doubt to find a person guilty of a crime before property can be forfeited.

Civil and legal nonprofit organizations have also raised what might be called ethical concerns around civil asset forfeiture. A main concern includes the potential appearance of conflict of interest when the same police agency that has seized the property makes the decision to retain it. In addition, these stakeholders have argued that when police agencies keep the proceeds from the forfeitures they conduct, it creates a financial incentive for them to find opportunities to pursue more forfeitures.

Finally, national reporting on civil asset forfeiture cases indicates that the practice may disproportionately affect minorities or people who do not have the financial means to pursue reclaiming their property. For example, the Pennsylvania chapter of the American Civil Liberties Union found that civil asset forfeitures in Philadelphia disproportionately affected African Americans in low-income neighborhoods.

Another concern expressed by stakeholders on the national level is that many states do not track data on the forfeitures they conduct, making it difficult to evaluate forfeiture programs and provide oversight for the funds generated by retained property. Research conducted by the Institute for Justice for the federal government, all 50 states and Washington, D.C., found that many states did not publicly report much information about the property confiscated or how they spend the proceeds from that property.

Many states have reformed their civil asset forfeiture programs in recent years to address such concerns

According to the Institute for Justice, three states have eliminated civil asset forfeiture entirely and only forfeit property under criminal law. The federal government and 32 states have adopted measures to change procedures or limit forfeiture activity. These measures include: raising the standard of evidence police must present to justify seizing and retaining property; increasing protections for innocent property owners; restricting participation in the federal Equitable Sharing Program; and adding new reporting requirements to increase transparency.

Background

Washington has established its own civil asset forfeiture laws

One year after the federal government passed the Controlled Substances Act in 1970, Washington developed its own Uniform Controlled Substances Act. In it, the Legislature revised and brought together many other statutes, and added new sections to align more closely with the federal law. Among the changes was a new section directly addressing drug-related assets and property which could be seized by police agencies. The list was fairly comprehensive; in addition to the illegal drugs themselves, it mentioned the raw materials and equipment used to produce drugs as well as the aircraft, vehicles or vessels used to transport them. The law also established that the police agency had the right to retain the property unless the owner could demonstrate the seizure was incorrect. It specified that the burden of proof was upon the owner to demonstrate that the property was his or her own, and that the presumption of the police that it was a byproduct of crime was incorrect.

The law has been revised many times over the following decades, with many changes made in the 1980s during the revitalization of the federal War on Drugs. In 1989, a legislative statement around the portion of the law addressing seizure and forfeiture (RCW 69.50.505) speaks to the state's goals in using these tools. It reads in part [***emphasis*** added]:

> *"The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; … state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and* ***the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes****…"*

The current law sets out the basic principles that govern who may seize property, under what circumstances, the procedures the police must follow to inform people their property has been seized and how to recover it, and dispose of the property if no one successfully claims it. It sets out the elements of due process for people whose property has been seized, which we summarize on the following page.

A. Law enforcement officers may seize personal property without a warrant if they have probable cause to believe that the property was used or is intended to be used to make or distribute illegal drugs.

B. The police agency under whose authority the seizure was made must notify the owner of the seized property within 15 days. It may do so by any method authorized by law or court rule including but not limited to sending a notice by certified mail with return receipt requested.

C. The property owner has 45 days (90 days in the case of real property like land or buildings) to respond in writing to the agency stating that they wish to reclaim their property. The law says owners should have a "reasonable opportunity" for their claim to be heard.

    - The chief law enforcement officer of the seizing local agency or someone he or she designates presides at this hearing. State agency hearings can proceed somewhat differently. They can be held before the chief law enforcement officer of the seizing agency or before an administrative law judge at the Office of Administrative Hearings.
    - The property owner has the right to request that their case be heard by a separate court; which court hears the case depends on the value of the seized property.
    - At the hearing, the burden of proof is upon the police to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

D. If the property owner is successful in arguing the item is not subject to forfeiture, the police agency returns the property promptly. If the owner engaged legal assistance to win the case, he or she is entitled to repayment of reasonable attorneys' fees.

E. If no one replies to claim ownership, the law allows the police to automatically consider the item forfeited by the owner and retain or dispose of it. It also becomes police property if the hearing decision goes against the property owner.

Although there are other state statutes under which police agencies can forfeit property, this audit focused on civil asset forfeitures conducted under RCW 69.50.505 because these account for most of the forfeitures conducted during the review period. See **Appendix C** for the full text of this chapter of state law.

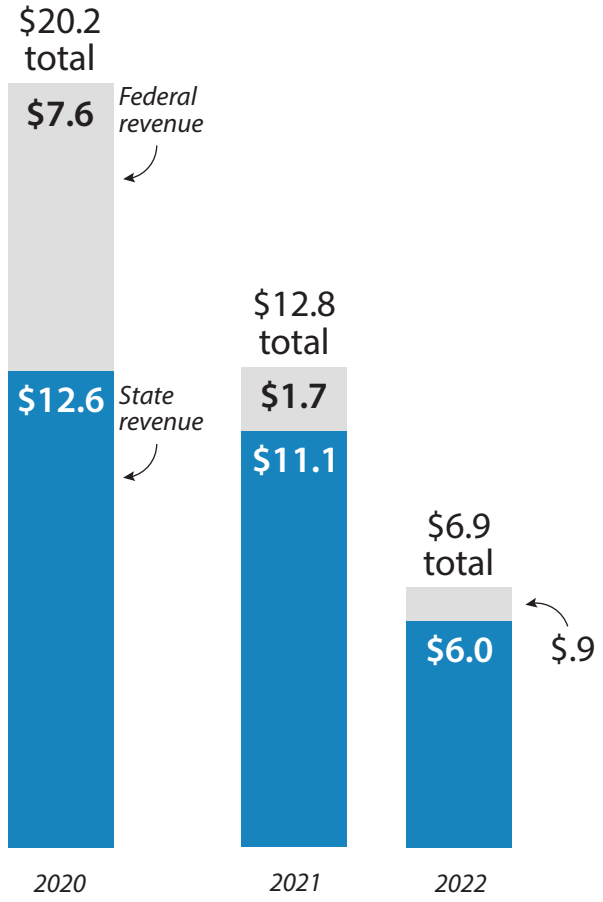
Many police agencies in Washington pursue civil asset forfeiture

Across Washington, police departments, sheriff's offices and multi-agency drug task forces conduct civil asset forfeitures. Of the state's roughly 250 police agencies, more than 100 reported receiving nearly $30 million during the audit's review period (January 2020 through December 2022) from civil asset forfeitures conducted at the state and local level. In the same period, police agencies received $10 million in Equitable Sharing Program payments for forfeitures conducted in partnership with the federal government. In total, police agencies in Washington received nearly $40 million from local, state and federal forfeitures (**Exhibit 1**). This represents less than 1 percent of the total expenses for these police agencies. State law allows police agencies to retain 90 percent of the proceeds resulting from these forfeitures and to use the funds for activities that help disrupt illegal drug activity.

This audit did not examine what contributed to a decline in civil asset forfeiture revenue during the review period. However, some agency officials said that the 2021 Washington Supreme Court decision, State v. Blake, which affected cases involving simple possession of drugs, led to a decrease in the number of civil asset forfeiture cases.

Exhibit 1 – Statewide, agencies received nearly $40 million from state and federal civil asset forfeitures

Audit review period: 2020-2022; Dollars in millions



Data note: State in calendar year, federal in federal fiscal year.

Source: Auditor prepared using data from the Washington State Treasurer's office and U.S. Department of Justice.

Civil asset forfeiture cases can be decided administratively by police agencies or judicially through the court system

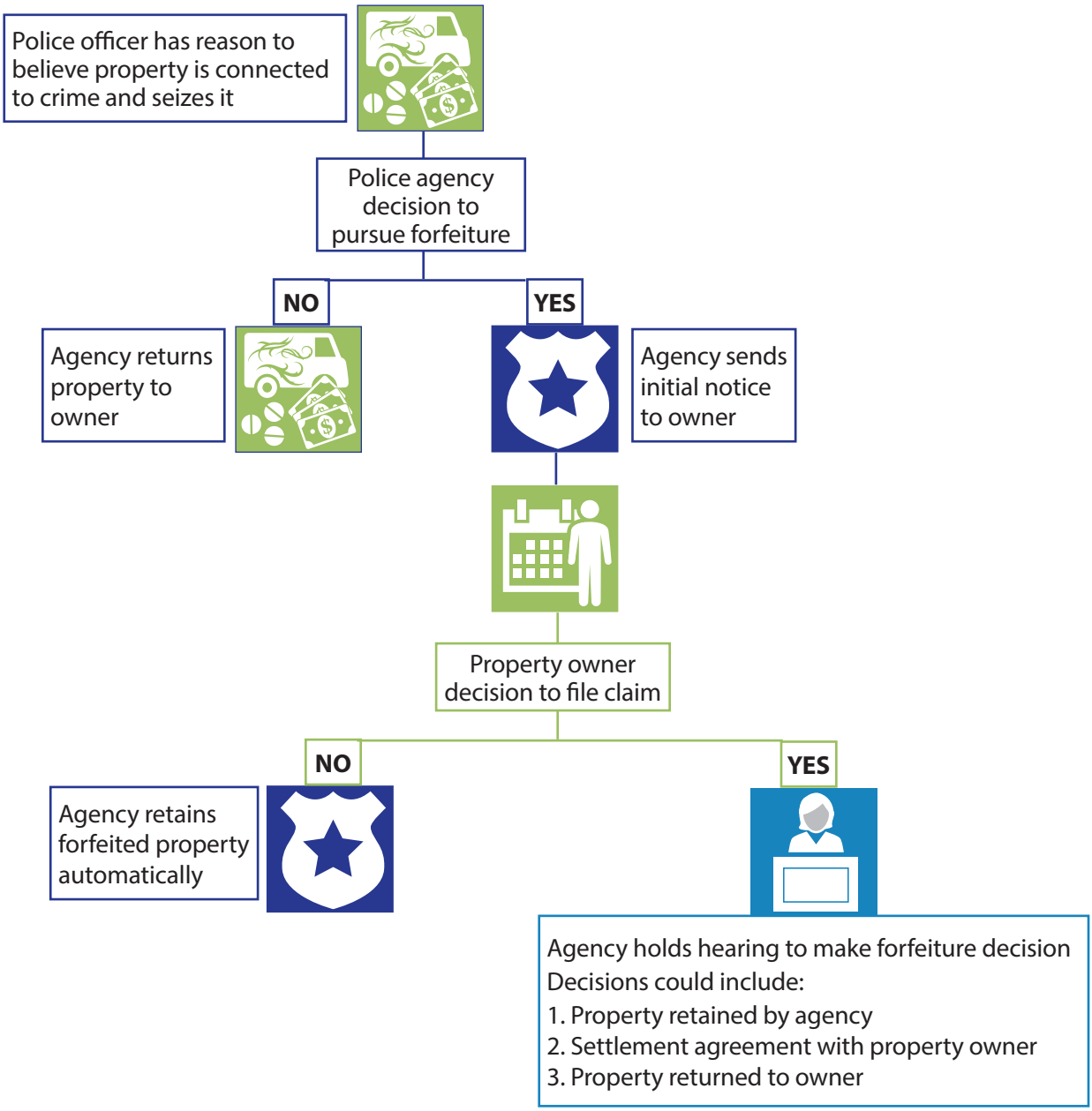
Civil asset forfeiture cases are administrative proceedings overseen by police agencies. The law requires the agency that seized the property to notify property owners that property has been seized for forfeiture within 15 days of the seizure. The notice tells the owner the deadline to contest the pending forfeiture. If the owner contests the forfeiture, seven of the eight audited agencies refer the case to people that serve as hearing examiners to decide whether the seizure and forfeiture are justified by a preponderance of the evidence. The State Patrol refers cases to the Office of Administrative Hearings to be decided by an administrative law judge.

The people serving as hearing examiners can be employees of the police agency, contractors engaged by the police agency, or employees of the city or county government.

At the property owner's request, a civil asset forfeiture case can be transferred to a judicial court proceeding. The owner must file this request with the police agency within the same time period allotted to initially contest the pending forfeiture. In a judicial court proceeding, a district or superior court judge decides whether the police agency has proved it has sufficient evidence to retain the property.

Exhibit 2 outlines the process for civil asset forfeitures that go through the typical administrative process. It shows that a failure to respond to a notice of forfeiture results in the police automatically retaining the property in question. State Patrol officials said they also send property owners an additional notice of final forfeiture with appeal options.

Exhibit 2 – Overview of current Washington administrative process to seize and forfeit property



Source: Auditor prepared based on state law and audited agencies processes.

The practice of civil asset forfeiture has also raised concerns in Washington

As the primer in this report noted, the premises and processes of civil asset forfeiture have attracted the attention of stakeholders and legislators alike. This is also true in Washington, where concerns focused on two areas. First, the method's approach to due process for the "interested party," namely the property owner, and related ethical issues around the appearance of conflicting interests. Second, the current process's lack of transparency.

Key factors identified by legislators and others that raised due process concerns include the low standard of evidence required of police to seize property and justify its forfeiture. Other issues include the lack of independence when police agencies make forfeiture decisions regarding actions of their own officers, and that state law does not require a criminal conviction to deprive people of their property.

Legislators and organizations representing both the police and the public expressed concerns that not much is known about what property is being seized for forfeiture, from whom, and how police agencies are using the proceeds from successful forfeitures. Currently, police agencies are required to report civil asset forfeiture activity to the State Treasurer's office, but reports are limited to basic descriptions of property and the amount of money received. These reports are not audited or available online. They noted that this lack of transparency regarding civil asset forfeiture activity limits the state's ability to evaluate program effectiveness and inform policy.

This audit examined civil asset forfeiture activity and due process at eight police agencies

The audit examined eight police agencies to better understand civil asset forfeiture activity in Washington, including what has been seized for forfeiture, from whom, and how the proceeds are used. The audit also looked at state requirements and leading practices to identify opportunities to address concerns around due process for people involved in civil asset forfeitures. We selected the eight police agencies based on factors that included civil asset forfeiture activity and revenue, geographic location and type of agency. The agencies included in the audit are:

- Four police departments: Centralia Police Department, Port of Seattle Police Department, Seattle Police Department, Yakima Police Department
- Two sheriff's offices: Grant County Sheriff's Office, Spokane County Sheriff's Office

- One state agency: Washington State Patrol
- One task force: Grays Harbor County Drug Task Force

The audit answered the following questions:

1. What are the characteristics of civil asset forfeitures conducted by law enforcement agencies?
2. What opportunities exist to address due process concerns in the state's civil asset forfeiture program?

This report is organized in four chapters, addressing these issues:

1. Focuses on the characteristics of civil asset forfeiture, including what property is seized and retained by police agencies and from whom
2. Discusses the standard of proof needed to justify the forfeiture of property and the potential for apparent conflicts of interest from using the proceeds of civil asset forfeitures
3. Discusses the due process procedures of audited agencies and identifies potential improvements
4. Identifies potential improvements to enhance data collection and to provide more transparent reporting on civil asset forfeitures statewide

This report generally presents overarching results from across all audited agencies rather than individual agency results. Doing so provides a better understanding of civil asset forfeiture in the state, which can better inform policy on this important topic.

Audit Results

Civil asset forfeiture for the audited agencies typically involved property of low value and it disproportionately affected some racial and ethnic groups

Results in brief

Most audited agencies used civil asset forfeiture primarily to seize cash and other property associated with small-scale illegal activity. The property seized was often of relatively low value, due in part to the nature of common circumstances for seizure. Police agencies might also seize property of low value because neither state law nor internal policies forbid doing so. In some communities, certain demographic groups faced civil asset forfeiture at significantly higher rates compared to their presence in the local population overall. Staff at audited agencies, experts and attorneys offered insights as to why forfeiture affects some groups more than others. The audit found that most people involved in a forfeiture with audited agencies were not convicted of a related crime.

Important notes about data in this report

- State law does not currently require police agencies to collect, retain or publish data for many aspects of civil asset forfeitures. For this reason, our analyses were limited to available data from the eight police agencies selected for this audit.
- The results of our analyses should not be projected to all police agencies in the state because this data is not a representative sample.

Most audited agencies used civil asset forfeiture primarily to seize cash and other property associated with small-scale illegal activity

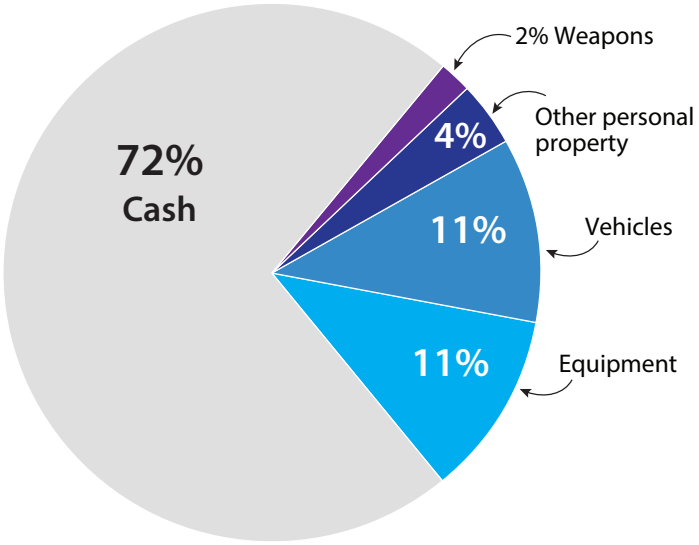
The eight police agencies included in this audit conducted 865 civil asset forfeiture cases for the review period of January 2020 to December 2022. Agencies varied significantly in the number of forfeiture cases they processed and the value of the property they seized during this period. The number of cases for each agency ranged from as few as 27 to as many as 265. The value of property agencies seized ranged from as low as $3.50 to over $450,000. The various analyses we conducted with data from the selected agencies, which are described in the sections below, help provide a better understanding of civil asset forfeiture activity in Washington.

Cash was the most common type of property seized

Cash accounted for nearly three-fourths of the property audited agencies seized from property owners. Other types of property agencies seized included vehicles, weapons, equipment (such as ballasts used to grow cannabis), and personal property (such as electronics or tools). **Exhibit 3** shows the type of property agencies seized as a percentage of total seizures.

Exhibit 3 – Cash was the most common type of property seized

Audit review period 2020-2022



Source: Auditor prepared using using civil asset forfeiture data from audited agencies.

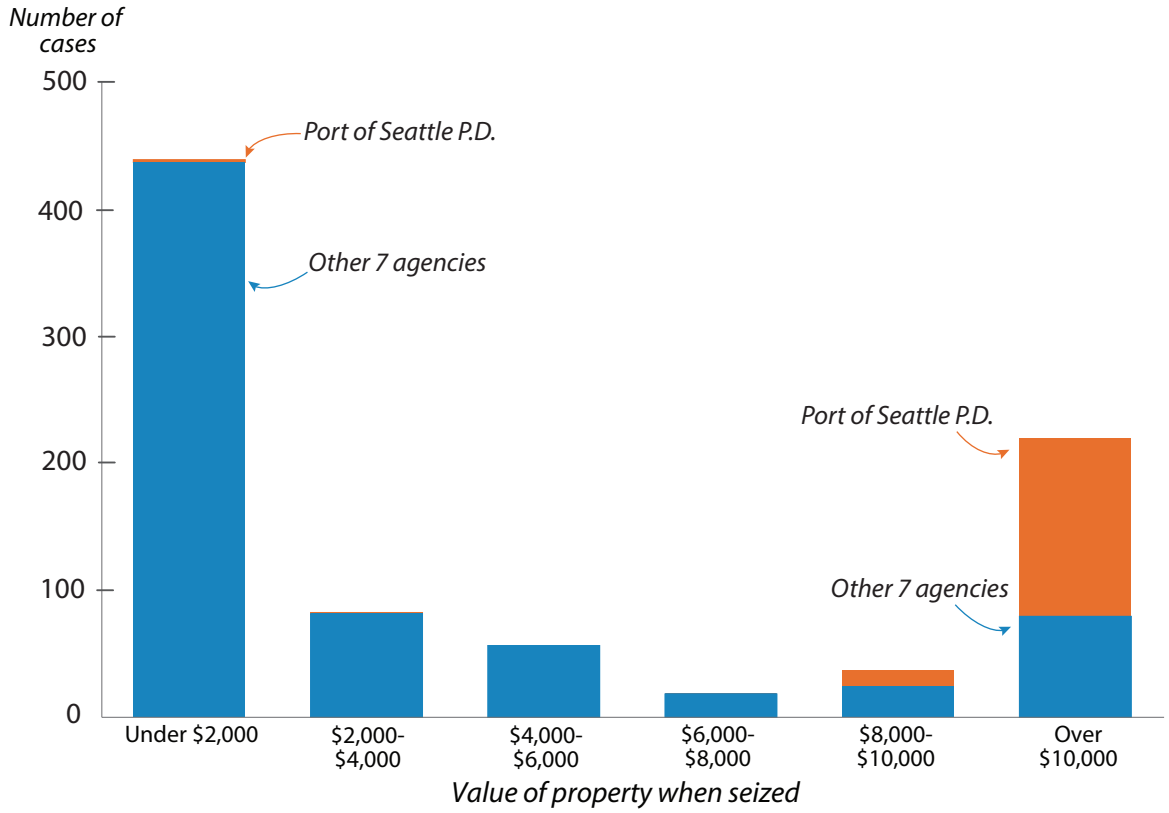
Officials at some police agencies said that they are focused on the crime when they stop someone in connection with a suspected crime, not the type or value of property that might be involved. They also said they primarily seize money because cash is the most common evidence of suspected illegal activity at the scene. While officers have discretion over when to seize cash, some said they usually do so because money is almost always present during encounters with suspected drug traffickers, and is the most common by-product of drug sales. Vehicles are also frequently associated with drug trafficking. If officers search a person's vehicle during a traffic stop and find indications of drug-related activity, state law permits them to seize the vehicle. Some officials said that they do not seize a vehicle or may return it after the seizure if it is the person's only one.

Property seized was often of relatively low value, due in part to the nature of common circumstances for seizure

The property agencies seized was relatively low in monetary value. More than half of all cases involved property worth less than $2,000 (**Exhibit 4**). Most cases (84 percent) involved just one or two people. High dollar value cases did occur, but they were less common. The Port of Seattle Police Department accounted for most of these cases, and 98 percent of them involved cash valued at more than $8,000.

Exhibit 4 – Cases by value of property when seized

Audit review period 2020-2022



Source: Auditor prepared using civil asset forfeiture data from audited agencies.

Based on interviews with audited agencies and a review of case files that included statements from officers about where they seized property, most of these relatively low-value seizures are derived from three common situations: traffic stops, encounters with people selling "street drugs," and illegal cannabis growth investigations. For both traffic stops and street-level drug dealing, property owners typically have low-value items, small quantities of drugs, or small amounts of cash with them.

Most of the cases we reviewed did not specifically mention whether the seized property was confiscated from a criminal organization. That ambiguity, combined with the property's low value and the fact that few people were involved in the case, suggested instead the forfeitures were associated with petty crime and small-time trafficking.

Below, we give examples of each of the three common settings for property seizure.

- **Traffic stops.** A police officer may pull someone over for a traffic violation and observe possible indicators of drug dealing in the person's vehicle. This could include things such as several stacks of cash in small denominations bundled together, equipment used to weigh drugs such as packaging material and scales, or large quantities of drugs.
- **Small-scale drug sales.** Officers patrolling a neighborhood known for petty crime may encounter someone they suspect of handling drugs or the proceeds from drug sales, and find evidence or cash. An officer may also conduct an undercover operation where they buy drugs from someone who is suspected of selling drugs, also known as a "controlled buy."
- **Illegal cannabis operations.** Police officers may also search property owned by people suspected of growing cannabis illegally. Agency employees said they receive anonymous tips from people who suspect someone of growing illegal cannabis and from local energy companies when they identify a home with unusually high electricity consumption compared to the average home. Police typically investigate the property to gather evidence until they have enough to secure a search warrant. Once the search warrant is served, they seize any items they suspect have been used to grow the plants or are the proceeds from illegal sales. These investigations can be conducted by a single agency or by a drug task force involving multiple agencies.

Some agencies' officials said that interactions with lower-level drug traffickers are important because they may produce leads police can investigate and thus disrupt larger actions by organized criminal groups. They also said they consider civil asset forfeiture an essential strategy to prevent the distribution of dangerous and controlled substances that contribute to the public health crisis that is harming communities.

Some agencies find low-value cases with clear ownership easier to prove

Some agency officials said they often seize low-value property for civil asset forfeiture because such cases tend to have property with a clear owner and are easier to prove. In contrast, high-value cases typically involve large-scale traffickers who are more skilled at evading detection, employing more sophisticated methods to conceal their connection to criminal activities, such as registering property in someone else's name. Some audited agencies said they do not focus on the property type or value, focusing instead on the likelihood they can prove the elements of the case during the forfeiture hearing.

High dollar-value seizures were common at only one audited agency: Port of Seattle Police Department

As noted earlier, the Port of Seattle Police Department takes a different approach to identifying suspected property, due to its jurisdiction at Seattle-Tacoma International Airport. This may account for the much higher value of the seizures it conducted during the audit period. Agency employees said that officers identify the cash they seize from people traveling into the airport by using a variety of methods. The agency said there is high demand for Washington-grown cannabis because it is legal in this state. People fly into Seattle-Tacoma International Airport with cash to buy cannabis which they intend to illegally export to states where it is not legalized.

Police agencies might also seize property of low value because neither state law nor internal policies forbid doing so

Unless their state law says otherwise, police agencies can set their own minimum limits or thresholds for the value of cash or property their officers may seize. According to the Department of Justice's guidance for federal agencies conducting forfeitures, minimum thresholds are intended to reduce the number of cases where the federal agencies seize property, enhance efforts to improve case quality, and expedite processing of cases that federal agencies do initiate. The established federal minimum threshold for forfeitures is at least $5,000 for cash, $10,000 for vehicles and $30,000 for real property.

Most audited agencies had not established minimum dollar thresholds in policy or procedures. Our analysis found that most of them seized some property valued at less than $100. In addition to the lack of minimum dollar thresholds, there are two other possible reasons for low-value seizures. First, officials at some police agencies said they are focused on the potential crime when they seize property from someone, not its type or value. Second, agency employees said their agency's practice was to refer high-value cases to federal agencies to investigate and conduct the forfeiture. They might do so because the large-value case falls under the federal government's jurisdiction or because the federal government could have greater resources to handle large cases.

In some communities, certain demographic groups faced civil asset forfeiture at significantly higher rates compared to their presence in the local population overall

Among the most serious issues raised at the national and state level was concern that forfeitures disproportionately affected some demographic groups. This audit sought to identify whether certain groups of people were affected by civil asset forfeiture more than others.

We found the audited police agencies do not collect demographic information of the people who lose ownership of their property through forfeiture. Although Seattle Police Department employees said they do collect race and/or ethnicity data for some of the people involved in its forfeiture cases, they did not inform us during the fieldwork period of this audit or provide such data for analysis. For this reason, we used an alternative method to identify people's probable race and ethnicity. The method we selected analyzes U.S. census data on surnames and the racial and ethnic makeup of geographic locations to predict someone's race or ethnicity. We applied this analysis to more than 1,000 people who were involved in forfeitures with the audited agencies.

While the method has some limitations, experts who use this technique estimate it is between 90 percent and 96 percent accurate when predicting people who are of Hispanic, White, Black and Asian or Pacific Islander descent. It is less accurate for Native Americans and multiracial people. But given the lack of actual demographic data, it is a reliable alternative to give the public, legislators and other stakeholders an understanding of who is affected by civil asset forfeiture in Washington. The method has been used by research institutions and other government agencies, including the RAND Corporation and the Consumer Financial Protection Bureau, when individuals' races and ethnicities were unavailable. See Appendix B for additional information about this methodology.

The audit found that in some communities, people in certain racial and ethnic groups had their property seized at significantly higher rates compared to their representation in the overall local population. The significant variations are shown in all the red and some of the yellow cells in **Exhibit 5** (on the following page). All instances of significant over-representation were based on counts of more than 40 people.

Exhibit 5 – At least one racial or ethnic group was disproportionately affected by forfeitures at audited agencies, but the degree of over-representation varied

Red cells indicate over-representation compared to proportion in population by **more than 10 percentage points**.
Yellow cells indicate over-representation by **between 1 and 10 percentage points**.
Uncolored cells indicate no over-representation.

Race or ethnicity	Civil asset forfeitures for this demographic group		Percentage of local population
	Numbers	Percent	
Centralia Police Department			
2+ Races	*	0%	9%
API	*	3%	1%
Black	*	3%	1%
Hispanic	*	13%	18%
Native Amer.	*	3%	0.1%
White	24	77%	76%
Grant County Sheriff's Office			
2+ Races	*	0%	3%
API	34	32%	2%
Black	*	0%	2%
Hispanic	32	30%	44%
Native Amer.	*	0%	3%
White	40	37%	51%
Grays Harbor Drug Task Force			
2+ Races	*	0%	6%
API	*	2%	2%
Black	*	0%	1%
Hispanic	*	13%	13%
Native Amer.	*	0%	5%
White	57	85%	76%
Port of Seattle Police Department			
2+ Races	*	0%	3%
API	14	7%	6%
Black	57	30%	13%
Hispanic	24	13%	18%
Native Amer.	*	0%	1%
White	94	49%	61%

Race or ethnicity	Civil asset forfeitures for this demographic group		Percentage of local population
	Numbers	Percent	
Seattle Police Department			
2+ Races	*	0%	9%
API	39	12%	17%
Black	54	17%	7%
Hispanic	73	23%	7%
Native Amer.	*	0%	0.5%
White	142	45%	62%
Spokane County Sheriff's Office			
2+ Races	*	0%	5%
API	*	0%	3%
Black	*	0%	2%
Hispanic	*	5%	7%
Native Amer.	*	3%	2%
White	93	92%	83%
Washington State Patrol			
2+ Races	*	0%	5%
API	49	21%	11%
Black	14	6%	5%
Hispanic	32	14%	14%
Native Amer.	*	0%	2%
White	133	58%	65%
Yakima Police Department			
2+ Races	*	0%	11%
API	*	0%	2%
Black	*	0%	1%
Hispanic	103	71%	46%
Native Amer.	*	2%	2%
White	40	27%	46%

Note: * indicates we suppressed the number because it was 10 or fewer people. API stands for Asian-Pacific Islander.
Source: Auditor prepared using civil asset forfeiture data from audited agencies and race/ethnicity data from the U.S. Census Bureau.

For five agencies – Grant County, Port of Seattle, City of Seattle, Yakima and the State Patrol – the share of civil asset forfeitures for people who were Black, Hispanic or of Asian and Pacific Islander descent surpassed their representation in the local population by more than 10 percentage points. For two agencies – Grays Harbor and Spokane County – the share of forfeitures for white people surpassed their representation in the local population by just under 10 percentage points. All other instances of over-representation in forfeitures compared to representation in population were small.

We selected comparison populations to reflect local demographics

For six of the eight audited agencies, we used the local population demographics as comparison (rather than the demographics of the entire state or some other population) because most of the people from whom property was seized lived within the agency's local jurisdiction. Also, while police agencies may sometimes seize property from people who live elsewhere, they most commonly interact with their own local residents.

For the State Patrol, we used the race and ethnicity of Washington's overall population as comparison because the Patrol's jurisdiction covers the entire state.

The Port of Seattle Police Department sometimes seizes property belonging to people who come from other states. To create a comparison population for this agency, we calculated a weighted average of the race and ethnicity for the states of residence for people involved in its civil asset forfeitures based on number of cases from each state.

Staff at audited agencies, experts and attorneys offered insights as to why forfeiture affects some groups more than others

The audit obtained insights about possible reasons for these disparities in civil asset forfeiture cases for some racial and ethnic groups. In addition to reviewing research from civic and governmental organizations, we interviewed staff at audited police agencies and defense attorneys who handle forfeiture cases. The most commonly cited explanations touched on issues of policing, the characteristics of some criminal organizations, racial prejudice, and the problems of being "unbanked."

Research indicates some racial and ethnic groups may face more forfeitures due to stronger police presence in their communities. For example, a study conducted by the California chapter of the American Civil Liberties Union found that seizures and forfeitures that relied on federal law were prevalent in communities of color. According to the study's analysis of data from the Department of Justice and the U.S. Census Bureau, half of all federal Equitable Sharing Program's forfeiture payments were distributed to local police agencies serving communities where more than 70 percent of residents were people of color.

Some audited agencies said that because certain criminal organizations are associated with specific racial or ethnic groups, people in those groups may face higher forfeiture rates. Officers said that many illegal drug operations, including illegal cannabis farms, are dominated by organizations that are led by people from the same racial or ethnic group. Some of these operations are also funded by foreign nationals. The audit did not examine or validate these claims.

Defense attorneys who represent people facing civil asset forfeitures said that some racial and ethnic groups experience higher rates of forfeitures due to racial prejudice. These attorneys noted that civil asset forfeiture laws were established during the "War on Drugs" years, as part of broader legal efforts to combat drug trafficking. Those efforts often called for stronger penalties for crimes, even nonviolent crimes, associated with drugs that were more common in some communities than others, particularly Black communities. Some attorneys said that racial prejudice continued to significantly influence police agencies' priorities for investigations. According to these attorneys, this bias has led to enforcement disparities in civil asset forfeiture. The audit did not validate if racial prejudice affects who experience forfeitures.

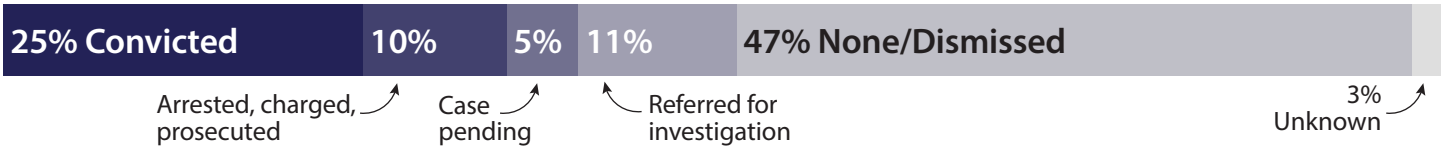
Research shows some racial and ethnic groups are less likely to have bank accounts and thus carry more cash. Studies from the Federal Reserve System show that in 2021 and 2022, 6 percent of American adults were "unbanked," meaning they lack checking, savings, credit card or money market accounts. The percentage of adults without a bank account is higher among African American (13 percent) and Hispanic (10 percent) people compared to white people (3 percent). People from these racial and ethnic groups rely more on cash for day-to-day transactions. This means that in the event of an encounter with police, the cash people carry could arouse suspicion of illegal activity and be seized by the police.

Most people involved in a forfeiture with audited agencies were not convicted of a related crime

The criminal conviction rate for people facing civil asset forfeiture was low. Of the nearly 1,000 people who faced forfeitures with audited agencies, 25 percent were eventually convicted of a crime, as illustrated in **Exhibit 6**. (Note that the State Patrol could not provide criminal case outcome data and is not included in the exhibit.)

Exhibit 6 – In most forfeitures, people were not convicted of a crime

Audit review period: 2020-2022; Numbers rounded and do not total 100%



Source: Audited prepared using criminal case outcome data reported by audited agencies.

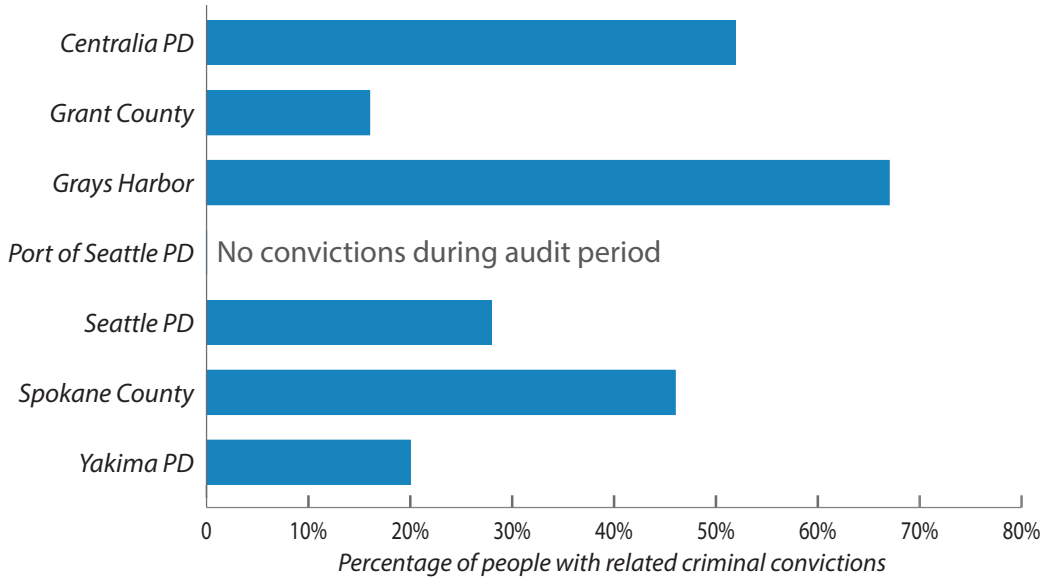
Some agency employees explained that the low conviction rate may be due, in part, to the following reasons:

- Prosecutors declining to press criminal charges due to insufficient evidence
- Prosecutors striking a deal with the property owner
- A backlog of cases to resolve during the COVID-19 pandemic
- The *State v. Blake* decision, which affected cases involving simple possession of drugs
- Agencies serving notices, in some cases, to multiple people who may have an interest in the seized property but are not all suspected of a crime. However, the audit analysis found that most forfeiture cases during the review period involved only one person. Therefore, the over-serving of notices in those cases that involved multiple people did not have a significant effect on the overall conviction rate.

Agencies' success rate for forfeitures associated with criminal convictions varied significantly (**Exhibit 7**; the State Patrol could not provide outcome data and is excluded from the exhibit). For example, the Grays Harbor Drug Task Force and Centralia Police Department had the highest conviction rates; agency employees attributed this success to having the evidence necessary to win the case.

Exhibit 7 – Criminal convictions related to civil asset forfeiture varied significantly by agency

Audit review period: 2020-2022



Source: Audited prepared from criminal outcome data reported by audited agencies.

The Port of Seattle Police Department had no convictions related to civil asset forfeitures during the review period. Agency employees said that this is because people typically transport the illegal drugs and the money separately through the airport, and the convictions usually happen in cases where drugs are found. They said that the agency has made drug-related seizures and arrests: from 2019 to 2022, the agency had 76 cases that resulted in criminal arrests and the seizures of drugs including cocaine, oxycodone, heroin, marijuana, fentanyl and methamphetamine.

The state's civil asset forfeiture law gives police broad authority and few protections to property owners

Answer in brief

Washington's low standard of evidence makes it easier for police to prevail in civil forfeiture cases. Owners must file a claim to regain seized property, which gives them an opportunity to present evidence concerning its innocence. State law allows the same police agency that seized property to decide the forfeiture case, an apparent conflict of interest. The audited police agencies made the final decision to forfeit property in most of the cases we reviewed. Property owners did not have their case decided by a court in any reviewed cases, even though this is an option in state law. Other states have addressed conflict of interest concerns by dissociating seizure from forfeiture decisions.

The audited agencies retained or disposed of most property automatically because no one filed a claim for its return. Defense attorneys offered many reasons why people might not file a claim. These reasons included: reclaiming the property was not cost effective; owners did not receive notice of the forfeiture; language barriers made it hard to understand the notice. The last problem can be compounded by a short window to file a claim. Required attendance at multiple hearings can also present barriers. Agency officials also offered potential reasons. They said people may not file a claim because they are reluctant to engage with the police or because they may be guilty of drug-related crimes.

As state law allows, police agencies retained 90 percent of the proceeds from forfeited property. Stakeholders have raised concerns that this practice creates a financial incentive for seizing property for forfeiture. Redirecting some or all funds to neutral accounts might address concerns around financial incentives. Some states have also taken steps to decrease police participation in the federal Equitable Sharing Program.

Washington's low standard of evidence makes it easier for police to prevail in civil forfeiture cases

When property owners submit a claim to recover their seized property, state law requires police to produce a relatively low standard of evidence, known as "preponderance of the evidence," to prove seizure and forfeiture were justified. Under this standard, the evidence must only show that it is more likely than not the property was used for or bought with money from criminal activity to retain

the property. If the property owner does not submit a claim, the police can retain the property automatically, with no hearing required. For details on standards of evidence used in civil asset forfeiture cases by 50 states and Washington, D.C., see **Appendix D**.

As **Exhibit 8** illustrates, 19 other states use the preponderance of the evidence standard, but most states (29 and Washington, D.C.) require a higher standard of evidence before police agencies may retain seized property. These higher standards for evidence include "clear and convincing evidence" and "proof beyond a reasonable doubt." The clear and convincing standard means that it is more likely to be true than untrue that property was involved in or arose from criminal activity. The proof beyond a reasonable doubt standard means that no other logical explanation can be derived from the facts except that the defendant committed the crime.

Exhibit 8 – Standards of evidence used in civil asset forfeiture cases by 50 states and Washington, D.C., from lowest to highest

See note in sidebar concerning Kentucky and Washington, D.C.

Common term	*Considering all appearances*	*More likely than not*	*Highly probable*	*Virtual certainty*	*Certainty*
Legal standard	Probable cause	Preponderance of the evidence	Clear and convincing evidence	Proof beyond a reasonable doubt	Conviction required
Number of states	1	20 including WA	11	12	7

Source: Auditor prepared using data from the Institute for Justice.

Note: Kentucky and Washington, D.C., have multiple standards of evidence but were only counted in the "clear and convincing evidence" category. Kentucky also uses probable cause and Washington D.C. also uses preponderance of the evidence, depending on the circumstances of the case.

The "conviction required" category in the exhibit includes states that use criminal forfeiture only, and those that require a conviction of the property owner or another person involved in the case before property can be deemed forfeited. With a criminal conviction requirement, the government must first prove that the owner of the property is guilty of a crime before their property must be forfeited.

Owners must file a claim to regain seized property, which gives them the opportunity to present evidence concerning its innocence

In criminal cases, the government must prove that a person is guilty beyond a reasonable doubt to win a conviction. The law presumes the accused is innocent, and the defendant does not have to prove their innocence: the burden is on the government to provide evidence of their guilt. This presumption of innocence is not relevant to civil asset forfeiture because it is an administrative case against the property itself, not the person who owns it. The prosecutor representing the police must show evidence of the property's association with a criminal act to win the case, but they do not have to arrest, charge or convict the owner to do so.

Instead, people trying to regain their property must file a claim, which gives them the opportunity to present evidence that shows the property's innocence, that it was not used for or bought with money from criminal activity or, if it was, they did not know about it. For example, if the police consider that the seized cash was connected to drug trafficking, the owner must present evidence to prove the money came from a legitimate source of income, such as pay stubs from an employer or unemployment checks. If the owner cannot demonstrate the money derived from a legitimate source of income, he or she must show they did not know of its connection to illegal activity.

Thirteen states and Washington, D.C., have increased protections for property owners by making the police agency responsible not only for proving that the property they seized is connected to crime but also that the owner knew about it. The intent of shifting the burden of proof in this way is to help protect innocent property owners from being unfairly deprived of their property.

State law allows the same police agency that seized property to decide the forfeiture case, an apparent conflict of interest

An essential element of due process is to ensure the case is heard by an impartial decision-maker because it helps preserve both the appearance and reality of fairness for all parties involved. However, state law allows civil asset forfeiture cases to be resolved through an administrative process that allows the same police agencies that seized property to decide if their evidence is sufficient to keep it. While statute also allows forfeiture cases to be decided judicially by a court, this path is only exercised if the property owner knows it is an option and requests it.

The audited police agencies made the final decision to forfeit property in most of the cases we reviewed

We reviewed a sample of 40 cases handled by the audited police agencies. In 39 cases, the agency made the final decision. The case results included retaining the property automatically because no property owner submitted a claim; reaching a settlement agreement with the owner; and retaining the property after the owner submitted a claim and a hearing was held.

Of the eight agencies, a current employee at three decided whether the evidence was sufficient to retain the item. Two agencies contracted directly with someone to serve as a hearing examiner and decide forfeiture cases. For two agencies, the city or county employed or contracted with someone to serve as the agency's hearing examiner and decide cases. Finally, the Office of Administrative Hearings made forfeiture decisions for State Patrol cases in which the property owner filed a claim.

The people serving as hearing examiners are sometimes former prosecutors or judges, while others have a law enforcement background. To people outside the police agency, having an agency employee or someone contracted by the agency decide the case affects the appearance of impartiality in forfeiture decisions. We did not examine whether the people serving in this position had active certifications as hearing examiners nor did we evaluate the impartiality of their decisions.

Property owners did not have their case decided by a court in any reviewed cases, even though this is an option in state law

State law allows property owners to have someone independent of the police hear their arguments and decide whether there is sufficient evidence for the police to retain their property. When civil asset forfeiture cases are decided through the court system, a judge makes the decision and not the police agency involved in the seizure.

However, none of the cases we reviewed were decided by a court. To have a case decided by a court, the property owner must know that this option is available and inform the police agency that they intend to move their case to the court within 45 days of receiving the police agency's initial notice. As we discuss in the next chapter, communications with property owners must be clear enough for them to understand their choices and the consequences of their decisions.

Other states have addressed conflict of interest concerns by dissociating seizure from forfeiture decisions

Whenever the same entity controls both the action and the decision that the action was justified, the risk increases that the decision will appear prejudiced or predetermined. Critics of internal, administratively decided, civil asset forfeiture have raised this issue in Washington and elsewhere in the country. Some states have addressed conflict of interest concerns by requiring that agencies independent of law enforcement make forfeiture decisions.

Several states require judicial agencies to make forfeiture decisions, including California, Colorado, Oregon and Wisconsin. In these states, civil asset forfeiture cases go through the court system instead of the police agency or another administrative process. In California, a jury usually decides the outcome of the case.

Cases involving the state agency in this audit, the State Patrol, follow a hybrid administrative path. When property owners file a claim and request a hearing, the case is transferred to a separate state agency, the Office of Administrative Hearings, to be decided by an administrative law judge. The forfeiture decisions made by the independent Office of Administrative Hearings are considered final.

Audited agencies retained or disposed of most property automatically because no one filed a claim for its return

Audited police agencies automatically forfeited three-fourths of the property they seized. State law allows police agencies to retain or dispose of seized property automatically when the property owner either does not file a claim, files a claim late, or fails to attend a hearing after filing a claim. For many of the cases we reviewed, agencies could retain the items automatically because none of the owners involved filed a claim.

Some agencies' employees said they believe people do not submit claims for their property because they are reluctant to engage with the police even if they can demonstrate their property was not involved in a crime. Employees said another reason might be the person was guilty of drug-related crimes. This audit did not examine whether each person who had property seized was guilty or not guilty. The low conviction rate (25 percent) for crimes associated with the forfeiture suggests that guilt was not always the reason for declining to submit a claim. However, some employees said that the low conviction rate could also be because prosecutors decline to press criminal charges when they lack sufficient evidence to meet burden of proof or have a backlog of cases to resolve.

Defense attorneys offered many reasons why people might not file a claim

Attorneys who represent people facing civil asset forfeiture noted some hesitations from property owners similar to those described by police. They said that even people whose claim to the property is innocent could be afraid that merely filing for its return could lead to criminal charges. The attorneys listed other reasons why people might forfeit their property rather than pursue a claim.

- **Reclaiming the property is not cost effective.** While it is possible for people to represent themselves at a forfeiture hearing, police are sometimes represented by an agency attorney. This fact alone may prompt a person to consider engaging legal advice, which can be expensive. Attorneys themselves said that when the property is worth less than legal fees, people may decide it is not worth filing a claim for its return. The audit found the median value of property agencies seized for forfeiture was $1,760, and about 60 percent of the property was valued at $3,000 or less. However, the Institute for Justice notes that it costs about $3,000 to hire an attorney. Even in cases involving property worth more than this, people must either have enough money upfront to hire an attorney or find one who will agree to charge them

only if they win the case. While the law grants property owners the right to reimbursement of attorney fees if they win their case, they would need to know this right exists to benefit from it.

- **Owners did not receive notice of the forfeiture.** Attorneys noted cases where police agencies sent the notice to the wrong address. The audit also found that nearly 10 percent of the addresses where the audited agencies sent notices were potentially unable to be delivered, either due to missing or incomplete addresses.
- **Language barriers to understanding the notice, which can be compounded by short window to file a claim.** Attorneys said that in their experience, police agencies typically send the notice to property owners in English only. This poses a barrier to understanding for people whose primary language is not English. They also said the 45-day timeframe to file a claim is short, particularly for people who receive a notice in English and need help translating it, or for people who do not have legal representation to assist them.
- **Required attendance at multiple hearings can also present barriers.** Finally, attorneys said property owners who file a claim may be required to attend multiple hearings. In-person attendance can be difficult if they must take time off from work or arrange child care, while remote online meetings may be just as difficult if they lack access to a computer. Failing to attend any of these meetings may result in the automatic forfeiture of their property.

As state law allows, police agencies retained 90 percent of the proceeds from forfeited property

State law conveys 90 percent of the proceeds from a civil asset forfeiture to the police agency conducting the seizure; agencies are to use this money for activities focused on reducing drug trafficking. The audited agencies reported receiving more than $13 million from civil asset forfeitures during the review period. As the law allows, they retained 90 percent of this amount and, as required, they sent the remaining 10 percent to the State Treasurer. Most agencies said they use the proceeds from forfeitures to buy additional equipment, including tactical vests, helmets, ammunition, firearms and vehicles. Agencies also said they use this money to pay for training, salaries, overtime and other operating costs related to forfeitures.

Stakeholders have raised concerns this practice creates a financial incentive for seizing property for forfeiture

Research suggests that allowing police agencies to benefit from forfeitures can create a financial incentive for seizing property for forfeiture. With the direct and substantial benefit connected to proceeding with seizure and forfeiture, the practice incentivizes further pursuit of civil asset forfeiture cases. The greater the number of civil asset forfeitures an agency conducts, the more revenue the agency brings in and thus has available to spend.

For example, the Institute for Justice identified examples of police agencies in Alburquerque and Philadelphia where forfeiture proceeds made up significant portions of their budgets. In Philadelphia, forfeiture proceeds were about 20 percent of the budget for the District Attorney's Office.

For the six audited agencies for which we had revenue and spending data, forfeiture proceeds represented a smaller portion of their expenditures. For five agencies, we estimated that forfeiture proceeds represented less than 1 percent of each agency's total spending. For the sixth, the Port of Seattle Police Department, forfeiture proceeds represented about 7 percent of the agency's total spending. The total forfeiture revenue for these six agencies was $11 million; their total spending nearly $1.6 billion. We did not have spending data for the remaining two audited agencies.

Redirecting some or all funds to neutral accounts might address concerns around financial incentives

Some states have tried to address the concerns about financial incentives by requiring that all or a significant portion of proceeds from forfeitures be deposited into neutral accounts. Neutral accounts are government accounts that are not managed by the police, and might include the general fund, education and substance use control programs, or victims' compensation funds. Proponents of this approach said that eliminating the financial incentive for civil asset forfeiture helps ensure that police agencies are focused only on fighting crime and not the money derived from doing so.

Eight states and Washington, D.C., do not allow police agencies to keep proceeds from forfeitures they conduct. Missouri and North Carolina use forfeiture proceeds to fund public schools. Maine and New Mexico deposit proceeds from forfeitures into the general fund. Connecticut's forfeiture proceeds are directed to a crime victims' compensation fund.

Some states have also taken steps to decrease police participation in the federal Equitable Sharing Program

The federal Equitable Sharing Program allows police agencies to turn in property they seized locally to the federal government for investigation and forfeiture. When they do, property seized by state and local police agencies becomes subject to federal civil forfeiture law—not state law. When participating in this program,

police agencies can receive up to 80 percent of the forfeiture proceeds collected by the federal government, even if state law prohibits or limits police access to proceeds from state conducted forfeitures. All 50 states and Washington, D.C., participate in the Equitable Sharing Program.

According to the Institute for Justice, nine states and the District of Columbia have taken some steps to reduce participation in the federal Equitable Sharing Program that allows police agencies to bypass state laws.

- Five states – Arizona, Maryland, Nebraska, New Mexico and Ohio – prohibit state and local agencies from transferring property to the federal government for forfeiture unless the property is worth more than a threshold amount. These thresholds range from $25,000 in Nebraska to $100,000 in Ohio.
- Two states – California and Colorado – allow agencies to turn any property over to the federal government for forfeiture but prohibit them from receiving their portion of the proceeds unless the property meets a certain threshold: $40,000 in California and $50,000 in Colorado.
- Pennsylvania and Washington, D.C., prohibit agencies from participating in parts of the program.
- New Mexico bars police agencies from receiving any Equitable Sharing proceeds.

Audited agencies followed requirements of state law, but could do more to help people receive notice and understand how to reclaim property

Answer in brief

Agencies followed state laws around procedural due process for people involved in civil asset forfeitures. However, experts recommend additional practices to provide adequate civil protections to property owners, which only a few agencies had implemented. For example, some agencies did not use practices that help ensure property owners receive the forfeiture notice. Few agencies had implemented practices for their written notices that could help address problems of comprehension. Audited agencies also generally lacked staff guidance about ensuring notices are successfully delivered and easily understood.

Agencies followed state laws around procedural due process for people involved in civil asset forfeitures

State law describes several procedural due process steps police agencies must follow before they can deem property forfeited by its owner. Audited agencies generally complied with these requirements in the sample of 40 cases we reviewed, five from each agency. The review of these cases provides insights into the extent to which audited agencies followed key requirements and practices that ensure adequate due process for property owners. Note that the 40 cases are not a representative sample of all civil asset forfeiture cases conducted by these agencies, and these results cannot be projected to all cases at these agencies or to all cases statewide.

For a summary of procedural due process steps in Washington, please see pages 14-15 in the Background section of this report.

Audited agencies sent notices to property owners. First, police agencies must send a notice informing the property owner of the forfeiture proceedings within 15 days of the date on which they seized the property. It must set out the deadlines by which the owner must respond with a claim to the property (45 days for personal property, 90 days for real property, such as houses). In all 40 cases reviewed, the audited agencies sent notifications to property owners within 15 days and waited at least 45 days to allow property owners time to file a claim. In accordance with the law, when property owners did not file a claim, the agencies considered the property automatically forfeited by the owner.

Audited agencies informed property owners of their right to a hearing. If a property owner submits a claim, the police agency must inform them of their right to a hearing at which they can present evidence to show their property should not be subject to forfeiture. In the 23 cases where property owners filed a claim, the agencies sent them a hearing notice informing them of the date the agency set for their hearing. In four additional cases, the agency did not send a hearing notice because the agency had reached a settlement agreement with the owner, and so a hearing was not required.

None of the cases reviewed involved reimbursement for attorney's fees. If a property owner engaged legal representation and won their case, the police agency must reimburse the attorney's fees. Of the 23 property owners who filed a claim and requested a hearing, none of them won their case. Therefore, in none of those cases did an agency reimburse the attorney's fees because the property owner won. However, in two of the settled cases, the agency involved reimbursed the owner's attorney's fees as part of the settlement agreement.

Agencies said that reimbursement of attorney's fees in cases where the property owner wins happens infrequently, in part because forfeiture cases involving an attorney are relatively rare. Attorneys may be less likely to participate in forfeiture cases for any of several reasons: state law does not provide an attorney for claimants, property owners may not be able to afford one, or the cost of hiring one is greater than the value of the property seized.

Experts recommend additional practices to provide adequate civil protections to property owners, which only a few agencies had implemented

The legal resources organization Justia recommends two additional measures to ensure adequate due process. First, to use methods that increase the likelihood the property owner receives notice, and second to ensure the notice is written in such a way as to ensure the owner understands what to do to reclaim their property. Some agencies have implemented these practices; the others could do so without a need for legislative changes to strengthen due process.

Some agencies did not use practices that help ensure property owners receive the forfeiture notice

Our case review found that agencies complied with the legal requirement to send out the initial notice of their intent to retain the seized property. However, we consider that there are strong indications that some people did not receive this notice.

For example, in the 40 cases we reviewed, five notices were returned to the police agency as undelivered; we found no indication the agency made additional attempts to redeliver the notices. Additionally, nearly 10 percent of the addresses where agencies sent notices were missing essential information that is needed for delivery, such as a ZIP code or building number. It is possible these notices were not delivered or received. Attorneys we interviewed confirmed that they had handled cases in which notices had been sent to the wrong address. As already noted on page 28, nearly three-fourths of property involved in civil asset forfeiture cases was retained by the agency automatically, usually because people did not file a claim. Not receiving the notice is one factor that may have contributed to why people did not file a claim.

Several of the audited agencies have already adopted practices to help ensure that notices are delivered to property owners successfully, including serving notices in person and redelivering notices that are returned undelivered.

- The Port of Seattle Police Department, Seattle Police Department and Spokane County Sheriff's Office said they frequently serve their notices to owners in person, so they can be sure it was received. The Spokane County Sheriff's Office also said it has had officers knock on doors and make telephone calls when mail is returned to ensure the owner gets the notice.
- The Seattle Police Department and the State Patrol said they run another check of their databases to see if they can find another address to use.
- The State Patrol said staff send notices via both certified and first-class mail to maximize the likelihood that the property owner receives notice.

Few agencies had implemented practices for their written notices that could help address problems of comprehension

Most audited agencies do not provide notices in languages other than English

Providing the initial notice in a language the property owner understands could help them better understand what they can do to reclaim property. Six of the audited agencies provide the notice in English only, even though the demographic characteristics of their communities suggest they might sometimes contact people who do not understand written English. We identified three cases where the police knew a person spoke a language other than English, but nevertheless sent notices only in English.

Two of the audited agencies said they do not typically provide notices in other languages because they see few cases where the owner does not understand any English, even if they primarily speak another language. Three agencies also said that, in situations where their conversations and notices need to be translated, they have other services or employees that can help translate. However, without

standard practices for translation, there could be instances where the translator is not available or the translation is not effective.

One way agencies could be more sure notices are understood by property owners is to make it a standard practice to always provide them in other languages commonly spoken by their local population. For example, Yakima Police Department's practice is to always provide notices in both English and Spanish because a large percentage of its local population is Hispanic or Latino.

Most audited agencies' notices are generally not written to "plain talk" standards

Writing the initial notice using terms more people can understand easily could help property owners better understand their rights and what they must do to reclaim their property. Federal agencies are expected to meet standards of comprehension and readability set out in the Plain Writing Act of 2010, and Washington state agencies are guided by Plain Talk/Executive Order 05-03. These standards generally call for government-issued documents to use:

> ***"simple and clear language… Plain Talk messages are clear, concise and visually easy to read. They contain common words, rather than jargon, acronyms or unnecessary legal language."***

However, local government bodies – including police – are free to set their own standards or apply none at all. This means documents sent to property owners can vary considerably in readability and in the clarity of the instructions owners must follow to challenge property seizure and forfeiture.

Each audited agency had a standard initial notice document, which we assessed for readability and comprehension using a standard tool available in Microsoft Word. The tool produces a score that indicates what grade level of education a typical reader would require to understand the notice. According to Readable, a company that produces writing and readability resources for a wide range of organizations, an eighth grade reading level is considered ideal for communicating with the general public. We used that grade reading level as a benchmark for readability, although we note that it is just one element of a Plain Talk document.

The Word readability analysis for seven agencies produced a score that suggested the initial notice would only be easily understood by someone with an 11th grade reading level or higher. Agency employees said the notices are written using legal terms from relevant statutes to ensure the agency complies with legal requirements. However, property owners may not understand legal terminology due to language barriers or because, in most cases, they do not have an attorney to explain it.

One sample notice, provided by the State Patrol, achieved a better score in the Word analysis: at a 10th grade reading level, it was closest to the eighth grade level Readability recommends. The Patrol, as a state agency, is required to follow the Governor's Executive Order on Plain Talk. The sample letter in **Exhibit 9** (on the following page) included required information about the process of forfeiture in

Exhibit 9 – Washington State Patrol's seizure and intended forfeiture notice to property owners

<Date>

<Name>
<Address>
<City> <State> <Zip>

Dear Mr. <Last Name>:

This letter is to notify you that the described property below was seized by the Washington State Patrol (WSP) on <Date>. The intent of the WSP is to have this property forfeited to the state of Washington since it was used in connection with an offense involving controlled substances in violation of RCW 69.50.505.

- Case # <Enter Here>
- Seized: $X,XXX U.S. Currency <location, such as pants pocket>
- Date of Seizure: <Date>

You have the right to a hearing regarding this forfeiture. To initiate the hearing process, you must notify this agency in writing. Your written request for a hearing needs to be postmarked within 45 days from the date of this letter or no later than <Date>. Please include the following in your written request for a hearing:

- Current Address
- Current Phone Number
- Specify Items Being Claimed

The hearing will be held in accordance with RCW 34.05. If you fail to notify this agency of your claim of ownership or right to possession within the required time period, the property shall be deemed forfeited.

Source: Washington State Patrol.

short, simply constructed sentences, using generally familiar words. By making a few changes, the agency could further improve readability and perhaps lower the grade reading level. An example of an additional plain-talk revision includes explaining that the unfamiliar legal term "forfeit/forfeiture" means the agency could keep the property.

Agencies' notices also did not mention two rights property owners have when facing civil asset forfeiture

When property owners are aware of key due process rights they have when facing forfeitures, they can make more informed decisions about how to proceed with their claim to property. Two such rights are:

- To transfer the case from an administrative setting to a court of law
- To receive reimbursement for attorneys' fees should they win their claim

None of the audited agencies' notices informed property owners of these two civil rights.

Employees at the agencies offered several reasons for omitting mention of the right to move a case to court. Many said they thought that informing people of this right could be interpreted as giving legal advice. Some also said they assumed people could and would read the civil asset forfeiture law on their own and understand all their rights that way. One agency said it had not thought about including this information in the notice. Another agency said that it was not to its legal advantage to inform people of this right since they would be opposing parties in court.

Employees also said they saw no reason to mention the right to have attorneys' fees reimbursed in the notice because this is in state law; they assumed that property owners can read the civil asset forfeiture law for themselves.

Nothing in state law prevents police agencies from including more information about these two owners' rights in the initial notice. If they do, they may want to include a disclaimer that says it is fully up to property owners to decide which course of action is best or more appropriate for their situation.

Audited agencies generally lacked staff guidance about ensuring notices are successfully delivered and easily understood

Developing standard procedures can help agency managers set expectations for employees to ensure consistent due process for property owners. The audited agencies generally lacked written guidance on how to ensure notices are delivered to the correct address, what to do if a notice is returned as undelivered, and how to ensure notices are provided in a language that the owner understands. Only one of the audited agencies, the State Patrol, gives employees written guidance in these areas. Employees at some of the audited agencies said they do not have this guidance written down because having a written procedure about these areas goes beyond what the law requires their agencies to do.

Agencies could develop procedures to set expectations for employees to help ensure successful delivery of notices. This could include describing the databases, documents and other resources employees should check to identify the correct address to send the initial notice. The procedures could outline the methods to deliver the notice and how to make another attempt to deliver notices that come back undelivered. This may include delivering notices through regular and certified mail, in-person delivery and sending notices to multiple known addresses.

State law does not require police agencies to collect some key data on civil asset forfeiture nor make the data they do collect available online

Stakeholder concerns about transparency could be addressed by introducing reporting requirements to state law

As we noted in the first chapter of this report, the agencies in the audit did not collect all the data we needed for the analysis examining who was most affected by civil asset forfeiture. Collecting and reporting forfeiture activity in the state could help increase transparency about the practice. It would then allow agencies, legislators and stakeholders to evaluate program effectiveness and make data-driven policy decisions about this important procedure.

However, while Washington state law does specify police agencies collect certain information about the property (listed in the sidebar), it does not require detailed data about the people involved. Most audited agencies did not collect any additional data about the demographic characteristics of the people whose property had been seized.

Data required in state law focuses on property, not people

Police agencies must keep a record of the identity of the prior owner, if known; a description of the property; its disposition; its value at the time of seizure; and the amount of proceeds realized from disposition of the property.

Police agencies are required to report very limited information about civil asset forfeiture activity to the State Treasurer's office every quarter; these are mainly basic descriptions of property forfeited and the amount of money received. State law does not require individual agencies to publish these reports online. Furthermore, state law does not require the State Treasurer to publish, for example online on its website, a statewide report on forfeiture activity.

After the conclusion of the audit, Seattle Police Department employees said that the agency does collect race and/or ethnicity data for some of the people who faced civil asset forfeiture with the agency. However, the agency did not provide this data for analysis during the fieldwork period of this audit.

Leading practices and examples from other states could offer Washington a path to greater transparency

The Institute for Justice has researched and graded all 50 states on six components of transparency, shown in the sidebar. Washington scores were low on each component because, aside from the limited data the state requires that agencies track and report to the State Treasurer, the state does not require that police agencies collect and report any of the six items.

Some states also have passed reforms to improve transparency about civil asset forfeiture. According to the August 2023 update issued by the Institute for Justice, Arizona, Kansas and New Jersey now lead the nation in transparency around civil asset forfeiture. These states track the usual information about the forfeited property, but also the civil and criminal outcome associated with the forfeiture, the type of proceeding in which the property was forfeited, and how funds were spent. They produce statewide reports with this information and make them available online, and they impose penalties on police agencies if the reports are not filed.

The Institute for Justice has researched and graded all 50 states on six components of transparency:

1. Level of detail tracked about forfeited property
2. Accounting of how forfeiture proceeds are spent
3. Producing statewide forfeiture reports
4. Making forfeiture reports publicly available online
5. Imposition of penalties for failure to file forfeiture reports
6. Independent audits of forfeiture accounts

Source: Institute for Justice.

In addition to the transparency components, the Institute for Justice has also developed sample legislation that states could use to inform reforms aimed at increasing transparency in civil asset forfeiture. The sample model legislation, with specific data it recommends states collect, can be found in **Appendix E**.

State Auditor's Conclusions

Our public discourse often features one-dimensional views of complex issues like preventing crime and ensuring transparency and accountability in our system of law enforcement. This report, however, brings two of an auditor's most powerful tools, independence and fact-based analysis, to review our system of civil asset forfeiture.

We found that police agencies are following the law in seizing property suspected of being involved in a crime. We also found that Washington's civil asset forfeiture system disproportionately affects some groups, and does not include the same legal checks and balances found in some other areas of our justice system.

For example, one of the goals of civil asset forfeiture is to disrupt large criminal organizations such as cartels. We found that most forfeiture cases involved small amounts of cash and low-value goods. In some communities, certain demographic groups faced civil asset forfeiture at significantly higher rates compared to their presence in the local population overall. And across the state, the law permits the same police agency that seized the property to determine whether there is sufficient evidence to retain that property.

I would emphasize the theme of transparency in our recommendations. They include such concrete steps as helping people better understand their right to challenge forfeiture by communicating in languages other than English. And we recommend the Legislature convene a workgroup to consider broader improvements to the system, such as establishing guidelines for statewide reporting of forfeiture activity.

I believe that we in Washington have demonstrated that government transparency can improve public programs without compromising those programs' goals. This audit shows that greater transparency, as well as other changes we have outlined, can help our state continue to disrupt wrongdoing by seizing the material elements of crime, while also protecting every Washingtonian's right to due process.

Recommendations

For the Legislature

We recommend that the Legislature convene a workgroup to consider potential improvements to the civil asset forfeiture process in Washington. These actions are largely intended to help ensure that law enforcement agencies are able to use civil asset forfeiture to help reduce organized crime while also improving protections for property owners.

Convene a workgroup of stakeholders that will address the following issues with civil asset forfeiture in Washington.

To improve the likelihood property owners will receive and understand the notice of law enforcement's intent to pursue forfeiture of property, as described on pages 39-43:

1. Determine additional practices that could be incorporated in the statute to address concerns about the delivery and understandability of the notice. Examples of such practices could include:
    - Searching multiple sources to identify the correct address
    - Using various methods to ensure successful delivery of the notice (for example by certified mail or in person)
    - Redelivering notices that are returned undelivered to other known addresses
    - Providing notices in English and in other languages predominantly spoken by the local population
    - Including in the notice information about the property owner's right to move their case to court and have attorney fees reimbursed if they sought legal representation and win their case
    - Identify notices used in the seizure and forfeiture process that could benefit from a standardized template and develop a standard template all police agencies could use. Examples of these notices include:
        - Notice of seizure and intended forfeiture
        - Hearing notice

To address the appearance of conflict of interest in administrative civil asset forfeiture decisions, as described on pages 32-33:

2. Designate an independent, neutral third party outside of law enforcement to oversee forfeiture decisions

To address the financial incentive in civil asset forfeitures, as described on pages 35-37:

3. Designate neutral account/s, outside law enforcement control, to deposit and redistribute the proceeds from forfeitures. This could include options such as:
    - Distributing funds to police agencies
    - Distributing funds to police agencies and other programs the legislature determines should receive the funds

To provide more safeguards for property owners facing civil asset forfeiture, as described on pages 30-43:

4. Set official, minimum-dollar thresholds for seizing property.
5. Increase the standard of evidence required to forfeit property.

To increase transparency about civil asset forfeiture activity, as described on pages 44-45:

6. Designate an agency that will prepare and publish online a statewide report of civil asset forfeiture activity
7. Determine the frequency and content of the statewide report
8. Determine the specific data police agencies would need to track and submit to the designated agency. Such data could include:
    - The types and value of property seized and forfeited
    - How the proceeds from forfeiture were used
    - The type of proceeding in which the property was forfeited, such as administrative, judicial, or criminal proceeding
    - The civil and criminal outcomes related to the forfeitures
    - The demographics of people who faced civil asset forfeiture
    - The number of cases where people filed a claim to contest the forfeiture
    - The RCW under which the property was forfeited (for example, drugs, money laundering, human trafficking)
9. Determine the format and frequency in which police agencies should submit the data to the designated agency

For the audited police agencies

To improve the likelihood property owners will receive notice of law enforcement intent to pursue forfeiture of property, as described on pages 38-43, we recommend audited police agencies:

10. Develop written guidance describing actions they expect staff to take to find the correct address to serve notices, successfully deliver notices to the right address, and redeliver notices that come back undelivered. The guidance should include actions beyond those required in statute, including:
    - The databases, documents, and other resources staff should check to identify the correct address
    - The service methods staff should use to deliver the notice (such as in-person, regular and certified mail)
    - The follow-up measures staff should take to redeliver notices that are returned undelivered (such as sending notices to other known addresses, attempting in-person delivery, making phone calls)

To help property owners understand what they need to do to prevent their property from being forfeited, as described on pages 38-43:

11. Make it a standard practice to provide notices in English and in other languages that are predominantly spoken by their local population
12. Have their notice templates reviewed and improved for plain talk
13. Add to the notice of intent to forfeit, the property owner's rights to have:
    i. Their case moved to court
    ii. Attorney's fees reimbursed if they sought legal representation and won the case

Guidance for all Washington police agencies

We consider the audit results so broadly applicable that it is in the state's best interest for every police agency in Washington to consider implementing the practices highlighted in this report to strengthen protections for property owners.

Agency Responses

Note: All audited agencies are invited to send a formal response to the final draft of the audit report, to be incorporated in the published report. In this instance, the Seattle Police Department declined to do so.

STATE OF WASHINGTON

January 2, 2024

Honorable Pat McCarthy
Washington State Auditor
P.O. Box 40021
Olympia, WA 98504-0021

Dear Auditor McCarthy:

Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) performance audit report, *"Civil Asset Forfeiture: Strengthening transparency and protections for property owners."* The Washington State Patrol (WSP) and the Office of Financial Management provide this response.

WSP's vision is to be the best public safety agency in the United States and welcomes scrutiny and recommendations for improvement, including through performance audits by the SAO. WSP already exceeds the due process protections associated with civil asset forfeiture in Washington, and processes civil asset forfeitures with a focus on disrupting and dismantling criminal activity.

One area of feedback is that the report makes only passing reference to several factors that have drastically impacted certain types of criminal prosecutions and seizure outcomes during the audit test period (e.g., prosecutorial backlogs, pandemic impacts on court dockets, the *State v. Blake* decision, or legal reforms that mandate diversion options instead of criminal charges). The report includes commentary on conviction rates, evidentiary standards or seizures occurring without criminal charges, but does so without adequate context of these influential factors occurring within the audit period.

We have attached our response to the recommendations made to law enforcement in the audit report. We encourage lawmakers to carefully engage with a diverse group of police and legal experts before implementing the recommendations in the report to avoid exacerbating the devastating impacts of drug trafficking and human trafficking on Washington communities.

Please thank your team for their work on this audit.

Sincerely,

Chief John R. Batiste
Washington State Patrol

David Schumacher, Director
Office of Financial Management

cc: Jamila Thomas, Chief of Staff, Office of the Governor
Kelly Wicker, Deputy Chief of Staff, Office of the Governor
Rob Duff, Executive Director of Policy and Outreach, Office of the Governor
Mandeep Kaundal, Director, Results Washington, Office of the Governor
Tammy Firkins, Performance Audit Liaison, Results Washington, Office of the Governor
Scott Frank, Director of Performance Audit, Office of the Washington State Auditor

Official Response to the Performance Audit on Civil Asset Forfeiture: Strengthening transparency and protections for property owners – January 2, 2024

The Washington State Patrol (WSP) and Office of Financial Management (OFM) provide this management response to the State Auditor's Office (SAO) performance audit report received on November 20, 2023.

SAO Performance Audit Objectives

The SAO's performance audit addressed two questions:

1. What are the characteristics of civil asset forfeitures conducted by law enforcement agencies?
2. What opportunities exist to address due process concerns in the state's civil asset forfeiture program?

SAO Recommendations: *The SAO report makes 13 recommendations. The first nine are to the Legislature, and the remaining four are to the audited police agencies, which includes the Washington State Patrol.*

Recommendations to WSP in brief:

SAO Recommendation 10: To improve the likelihood property owners will receive notice of law enforcement intent to pursue forfeiture of property:

10. Develop written guidance describing actions they expect staff to take to find the correct address to serve notices, successfully deliver notices to the right address, and redeliver notices that come back undelivered. The guidance should include actions beyond those required in statute, including:
    - The databases, documents, and other resources staff should check to identify the correct address
    - The service methods staff should use to deliver the notice (such as in-person, regular and certified mail)
    - The follow-up measures staff should take to redeliver notices that are returned undelivered (such as sending notices to other known addresses, attempting in-person delivery, making phone calls).

STATE RESPONSE: WSP concurs with this recommendation to law enforcement agencies. Effective June 2023, WSP updated written guidance to reflect its longstanding practices shared with the audit team, which include providing more notifications than legally required. RCW 69.50.505 requires the seizing agency to send notice of seizure by certified mail and considers service complete upon mailing within 15 days following the seizure. WSP sends notice via certified and first-class mail so that a signature requirement does not interfere with the notice delivery. This method checks multiple databases for best known addresses for initial delivery, and if any returned mail occurs, sends an extra final forfeiture letter with appeal rights.

Action Steps and Time Frame

- Update written guidance to staff on notifications. *Complete*.

SAO Recommendations 11-13: To help property owners understand what they need to do to prevent their property from being forfeited:

11. Make it a standard practice to provide notices in English and in other languages that are predominantly spoken by their local population.
12. Have their notice templates reviewed and improved for plain talk.

13. Add to the notice of intent to forfeit, the property owner's rights to have:
    i. Their case moved to court
    ii. Attorney's fees reimbursed if they sought legal representation and won the case

STATE RESPONSE: Regarding recommendation 11, while WSP concurs there are circumstances when a law enforcement agency should provide notices in English and other languages, we disagree that a change in WSP practice is necessary. The reference in the recommendation to "languages that are predominately spoken by [the law enforcement agency's] local population" is less practical for a statewide law enforcement agency. We respectfully contend that the proper application of this recommendation to WSP as a statewide agency is accomplished by WSP continuing its longstanding practice of issuing notices in English and any other language(s) identified during the trooper's interaction at the time of seizure.

Regarding recommendation 12, WSP concurs with the recommendation that notices should be reviewed and improved for plain language. WSP engaged several internal resources to review and improve its notice. Effective December 2023, WSP began using an improved notice. According to the readability analysis feature in Microsoft Word, WSP's revised notice has a Flesch-Kincaid grade level of 8.0.

Regarding recommendation 13i, WSP disagrees with the recommendation to add to its notice a property owner's right to move their case to court. The audit report discusses stakeholder concerns about a perceived lack of independence of hearing examiners, conflicts of interest, or self-dealing by law enforcement agencies, and recommends the notice include the information about forum selection (i.e., removal to court). However, forfeiture proceedings regarding items seized by WSP pursuant to RCW 69.50.505 are administered independently by the Office of Administrative Hearings, not a WSP employee or contractor. In the Acknowledgment of Claimant's Request for Hearing sent to the claimant by WSP, the claimant is notified that their matter is being referred to the Office of Administrative Hearings for assignment to an administrative law judge in a hearing setting. WSP will continue to defer to the individual's consultation with a legal advisor regarding forum selection and its impact on the individual's legal interests.

Regarding recommendation 13ii, WSP concurs with the recommendation to add information to the notice about potential reimbursement of attorney's fees. Effective December 2023, WSP revised its notice to include this sentence, "If you pay for an attorney to help you with your case and you get the property back, your attorney's fees may be reimbursed."

Action Steps and Time Frame

- Review and improve the notice for plain talk. *Complete.*
- Update the notice of intent to include language about potential reimbursement of attorney's fees. *Complete*.

Centralia Police Department
118 W. Maple Street / P.O. Box 609
Centralia, Washington 98531

Stacy Denham, Chief of Police
Phone 360-330-7680
cpd@cityofcentralia.com

December 28, 2023

To: Honorable Pat McCarthy, Washington State Auditor
Ms. Sohara Monaghan, Senior Performance Auditor

RE: Centralia Police Department's Formal Audit Response

Thank you for allowing the Centralia Police Department to be part of the Washington State Performance Audit for civil asset forfeiture and seizure processes. We agree with the Washington State Auditor (SAO) that any time property is being seized, it should be done consistently, transparently, and follow consistent due process practices. However, the audit process surrounding civil forfeitures can be complex and not easily audited to receive a more precise picture for a better understanding of the intent of the seizure and how or why it occurs. I am concerned that the simplicity of this audit may suggest that changes are necessary around the state that might not be necessary and inadvertently allow criminals to retain monies or equipment that will enable them to continue their criminal enterprises, thus harming the law-abiding citizens of Washington. We do agree that audits should occur to ensure transparency and that the civil forfeiture process is not abused.

The City of Centralia is unique in many ways and is unlike many other law enforcement agencies in the State of Washington. Our Police Department is an accredited agency with the Washington State Sheriffs and Police Chief's Association (WASPC) that services approximately 18,500 citizens. We are located on Interstate 5, midway between Portland and Seattle, and are the hub between Eastern Washington and the coast with State Route 12. We are also unique because we are a more rural community that works closely with our neighbors, the Chehalis Tribe. We have a highly desirable destination for visitors and criminals alike to our outlet stores, drawing in people from around Washington and Oregon.

Audit Recommendations for the Audited Police Agencies:

Predicting Race and Ethnicity of People Involved in Organized Crime:

We agree with the Auditor's findings that no demographic information was specifically tracked during forfeiture proceedings and that it does meet current Washington State standards. However, that data should be reasonably located in the reports covering those incidents. We also agree that data should be collected and reviewed as part of every agency's year-end reporting. However, I have concerns over the Auditor's belief, assumption, or inference that the proportionate number of seizures should be consistent

with the demographic population base. As we are all aware, statistics can be easily manipulated, and this should be an area of great caution regarding how the Auditor portrays it to legislators and the citizenry. One main issue is that we all have a very mobile population, from the southern border to state-to-state travelers. Our demographics, along with so many other agencies, change almost daily, with no natural way of tracking demographic movements, and we should not be monitoring the movements of anyone who is not currently under lawful investigation. The Auditor's attempt to predict a particular population's propensity to commit a crime and their movements are incredibly difficult and highly dangerous.

Audit Recommendations 4 and 5. "Designate neutral account/s, outside law enforcement control, to deposit and redistribute the proceeds from forfeitures… Set official, minimum-dollar thresholds for seizing property. Increase the standard of evidence required to forfeit property."

Centralia Police Department Response: We agree with the Auditor that not all agencies have written policies on a minimum amount to base the reason to initiate a forfeiture procedure. Even though there is no minimum amount, we use a best practices style for determination. The idea behind large-scale forfeiture proceedings aligns with the federal government, which has to use a federal prosecutor and the resources to do long-term investigations, making sense that they have a minimum standard. From a smaller department standard, we use the forfeiture laws to not allow ill-gotten gains to stay with the much smaller, in most cases, criminal enterprise. Organized crime looks very different depending on the organization; most are loosely tied together. In the case of smaller seizures, a person or group of people deal drug trafficking, participate in organized retail theft, catalytic converter thefts, etc., and obtain money or property from their illegal activity they should not be allowed to keep. Most of those profits are usually much lower than the federal government standard, which explains why the Port of Seattle has a much higher seizure value than other municipalities. We disagree with the Auditor's assertion that a minimum dollar amount should be imposed.

Audit Recommendations 1, 4, 5, and 11. "Determine additional practices that could be incorporated in the statute to address concerns about the delivery and understandability of the notice. Examples of such practices could include"

Centralia Police Department Response: We agree with the Auditor that preparing forfeiture paperwork at an 8th-grade reading level and in multiple languages is the preferred service method. In this regard, we recommend that the state take the lead in making the seizure paperwork uniform across the state as it does with a DUI packet. This will elevate any misinterpretations of the law and readability. However, I don't think the Auditor fully appreciates the extent agencies go through to ensure accurate service of all documents. The Centralia Police Department attempts to serve all paperwork in person if possible. Suppose we are not able to serve in person. In that case, we send an English form to all addresses provided by the suspect at the time of contact, the

address on their identification card, or any other address we discover. We have even served seizure documents to inmates at the Department of Corrections, as that was their current address. People sometimes do not contest the forfeiture because they know the seized items were not theirs or agree they were ill-gotten. Moreover, another reason for people not being served or fighting to reclaim property is that criminals do not like to give out their home addresses if they know an arrest warrant will likely be issued, or they might be attempting to conceal other criminal activity.
The hearing examiner pays for an attorney.

Audit Recommendation 2. "To address the appearance of conflict of interest in administrative civil asset forfeiture decisions… Designate an independent, neutral third party outside law enforcement to oversee forfeiture decisions."

Centralia Police Department Response: We also agree with the Auditor that there should be a different review process for forfeiting property rather than being the seizing agency and deciding the outcome of the hearing. The Centralia Police Department pays a municipal court judge a fee to be the hearings examiner in all forfeiture hearings. The judge applies the law evenly and has ruled against the city in cases for various reasons. This is something that should be implemented as best practices for optics if nothing else. I am concerned about providing legal counsel for a civil hearing, as it could open the door to other civil actions, such as traffic infractions. If the defendant chooses to contest the forfeiture, they are made aware of their option to appeal it to a state court at the time of the initial hearing.

Audit Recommendation 3. "Designate neutral account/s, outside law enforcement control, to deposit and redistribute the proceeds from forfeitures."

Centralia Police Department Response: We agree that there should always be an oversight on how proceeds from forfeitures should be used like there is with the Federal Profit Sharing Program, but removing it from the agency that seizes it will potentially create unanticipated issues. It is understood that no seizure process should **ever** be undertaken to replace or support a budget. However, moving through the forfeiture process is time-consuming and expensive. If the proceeds of seized property were removed from agencies that use it to continue their efforts to fight crime, it would negatively impact their community as a whole.

Sincerely,

Stacy Denham
Chief of Police
Centralia Police Department

Sheriff Joe Kriete

GRANT COUNTY SHERIFF'S OFFICE

P.O. Box 37, Ephrata, Washington 98823
Telephone 509-754-2011 ext. 2001

December 29, 2023

The Honorable Pat McCarthy
Office of the Washington State Auditor
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RE: Grant County Sheriff's Office Response to the Civil Asset Forfeiture Audit

The Grant County Sheriff's Office (GCSO) was one of the eight agencies audited by the State Auditor for the Civil Asset Forfeiture Performance Audit ("Audit"). As an accredited agency, GCSO has demonstrated dedication to protecting procedural justice and ethical practices and will continue to do so.

It appears to me that the State Auditor is seeking to dramatically alter civil asset forfeitures which would consequently dramatically limit civil asset forfeitures during a time when Washington State is seeing an unprecedented spike in illicit drug overdoses and deaths.[1] In Washington State, the years 2020 and 2021 both saw a 35% increase in opioid-related deaths and 2022 saw a 25% increase.[2] During this same period, the State Auditor's Civil Asset Forfeiture Performance Report ("Report") showed civil asset forfeitures dropped from $20.2 million in 2020 to $12.8 million in 2021 and $6.9 million in 2022. *See* pg. 16. While the issues surrounding the opioid crisis are complex, the State Auditor and Legislature should take note of this inverse relationship.

The opioid crisis has greatly impacted Grant County. As of the time of writing this response, GCSO is actively investigating seven (7) controlled substance homicides.

The Report

The State Auditor contends that they provide "independence and fact-based analysis." Pg. 3. I was extremely disappointed to see only lip service applied to

[1] *See* Washington Health State Department of Health, https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/opioids/overdose-dashboard.
[2] *See* Addictions, Drugs & Alcohol Institute, University of Washington, https://adai.washington.edu/wadata/opiate_home.htm#:~:text=These%20increases%20in%20counts%20far,a%2025%25%20increase%20to%202022.

1/2023

"independence" and "fact-based analysis." I believe the Civil Asset Forfeiture Audit Report demonstrates a thinly veiled strong bias against civil asset forfeitures.

The State Auditor Demonstrated That They Were Not Independent

Throughout the process, the State Auditor's team demonstrated a clear bias against civil forfeitures. While I won't attempt to provide a complete list, a few items that highlight this clear bias are as follows:

- A heavy reliance on the Institute for Justice. As marketed on their website,[3] the Institute for Justice is a law firm and advocacy group with the specific agenda of eliminating or severely restricting civil asset forfeitures.[4]
- While the State Auditor obviously used information from at least one group that is attempting to abolish civil asset forfeitures or severely restrict them, I am unaware of any attempts by the State Auditor to contact the Washington State Association of Sheriffs & Police Chiefs, the Washington Association of Prosecuting Attorneys, or other groups advocating on behalf of law enforcement. This embrace of an advocacy group with obvious bias against civil asset forfeitures and shunning inclusion of law enforcement advocacy groups demonstrates the clear bias of the State Auditor in this report.
- In the Executive Summary and Primer, the Report does not provide the appropriate and important context for the Report. Namely, the Report deals with only ONE of Washington State's forfeiture statutes, RCW 69.50.505 (civil asset forfeiture statute relating to possessing illegal drugs and drug trafficking). *See* pg. 15. While on page 15, the report states that the report focused on RCW 69.50.505, many of the legal statements regarding forfeitures are inaccurate or misleading because they address Washington forfeitures in general. As an example:
  - The Report reads, "The law allows officers to seize property without securing an arrest, charge or criminal conviction of the property owner." Pgs. 3, 7. This statement is inaccurate. While the drug forfeiture statute, RCW 63.50.505, does not require an arrest, charge, or criminal conviction; RCW 10.105.010 requires a conviction for a law enforcement agency to forfeit under the felony civil forfeiture statute.
- The Report contains other inaccurate and misleading information. As an example:
  - The Report reads, "In law, the inanimate object—be it car, cash or gun—is the defendant, which means the property owner is only an 'interested party' to the suit and thus not provided an attorney in efforts to regain the seized items." Pgs. 4, 7. While it is true that the forfeiture procedures proceed *in rem*, against the property, potential property owners are treated like civil defendants and are not simply

[3] Institute for Justice, https://ij.org/issues/private-property/civil-forfeiture/
[4] *See ibid.*

"bystanders" as the Report alleges. *See* pg. 12. Just like eminent domain actions or code enforcement actions, the person or entity asserting a property interest in a civil case does not receive the services of an attorney at the expense of the taxpayers.

- The State Auditor left out an important piece of the civil asset forfeiture process. The person asserting their property ownership, a "Claimant," has the potential to appeal a law enforcement agency's decision to a judicial court.[5]
- The State Auditor consistently provided extremely short deadlines during the audit making it difficult or impossible for county employees to meet SAO requests while continuing to meet the daily demands of their jobs.

The State Auditor Did Not Provide a Fact-Based Analysis

There are two areas where the State Auditor's "fact-based" analysis fails: (1) The purported disproportionate effect on Asian or Pacific Islander race in Grant County; and (2) The low arrest, charge, or conviction rates of people with a potential property interest in seized items.
To understand why the SAO's analysis and conclusions are inaccurate or at best misleading, context is important. After an agency seizes an item for the civil asset forfeiture process, an agency must send a notice of seizure to anyone who the agency is aware of that has a property interest in the item(s).[6] When it is not clear who has a property interest in an item or items, in an effort to protect potential property owner's due process, GCSO does not just send one notice to the person it thinks is the likeliest to be the property owner. GCSO sends a notification to anyone who it believes could potentially have a property interest.

Purported disproportionate effects on Asian or Pacific Islander race in Grant County

A GCSO case study demonstrates that the State Auditor's methodology for determining that civil asset forfeitures disproportionately affect some racial/ethnic minority groups as compared to their overall presence in the local population is deeply flawed. Based on its own methodology, the SAO the State Auditor's Office suggests members of Asian Pacific Islander (API) race are overrepresented by GCSO civil asset forfeitures at a significantly higher rate as compared to their presence in the Grant County population. Pg. 26.

However, the facts behind the "statistics" tell a different story. GCSO is the parent agency of the Interagency Narcotics Enforcement Team ("INET"). It is not uncommon for outside agencies to request INET's expertise. In one such instance, the Washington State Patrol requested assistance in a large-scale illegal cannabis grow bust that occurred outside of Grant County. In this instance, it was unclear who had an interest in the seized property. To protect the due process of the people and businesses with a potential property interest, notices of seizures were sent to

[5] *City of Sunnyside v. Gonzalez*, 188 Wn.2d 600, 607, 398 P.3d 1078, 1081 (2017).
[6] "The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the **owner of the property** seized and **the person in charge thereof** and **any person having any known right or interest therein, including any community property interest**, of the seizure and intended forfeiture of the seized property." RCW 69.50.505(3) (emphasis added).

people and businesses involved in the cannabis grow. A total of 22 notices were sent to individuals that GCSO believed could potentially claim a property interest as well as 3 businesses. The 22 individuals appear to have names that may be of Asian descent. I use this metrics only because the SAO used a methodology that used surnames as part of how it predicted race. Pg. 25. However, we have learned that names do not necessarily reflect a person's actual race and that names are not an accurate indicator of how a person identifies.

Similarly, another case involved the Kittitas County Sheriff's office requesting INET's assistance in another illegal cannabis grow bust, and similarly the result was 10 notices being sent to individuals who appear to have names associated with Asian race.

That is a total of 32 notices provided to individuals with names that appear to be of Asian descent. These individuals were connected with the illegal cannabis grows and as a result GCSO attempted to protect any property interest they may have had by sending each individual a seizure notice. The chart in the report on page 26 identifies the civil asset forfeitures by GCSO for the Asian or Pacific Islanders as a total of 34.

Even though INET responded to a partnering law enforcement agency's request for assistance for cases outside of Grant County, and even though notices were sent to multiple people and businesses in an attempt to protect possible but unknown property interests, the SAO's methodology concludes that in Grant County, Asian or Pacific Islanders "faced civil asset forfeiture at significantly higher rates compared to their presence in the local population overall." Pgs. 25–27. This is extremely misleading.

The SAO asserts that the methodology it uses "is a reliable alternative to give the public, legislators and other stakeholders" and "has been used by research institutions and other government agencies." Pg. 25. The above case studies show that this methodology as used in this context produced incorrect and misleading information.

The low arrest, charge, or conviction rates of people with a potential property interest in seized items

An issue with the SAO's conclusion that low conviction rates of property owners are a concern is similar to the fundamental flaw underlying the race issue. Just because GCSO sent a notice of seizure to an individual, does not mean that they are necessarily the property owner. The SAO is equating a notice being sent to a person as the same as establishing that the person the notice was sent to is the property owner. GCSO sends notices to any individual or business that could potentially have a property interest in the item(s) it seizes. The result of this dedication to the protection of property rights is that GCSO sends many notices to people whose involvement in the illegal activities may not be clear, even when it is clear that the property has been used for certain illegal purposes.

Additionally, the above cases occurred outside of Grant County and thus the decision to pursue criminal charges or not was not GCSO's decision. There are myriad reasons a prosecutor may decide not to proceed on a case including reasons that have nothing to do with the strength of the evidence. For example, sometimes deals are struck, and defendants are willing to work with the prosecution on a different case.

The SAO's methodology for "fact-based analysis" is deeply flawed and lacks an understanding of the complexities of the issues surrounding civil asset forfeiture.

Civil Asset Forfeiture Realities

The realities of illegal drug trafficking and the harm it creates in our community make utilizing civil asset forfeiture an important tool in its disruption. Civil asset forfeitures in a drug trafficking context serve an important purpose by helping to protect our communities as the opioid crisis reaches new devastating heights. They assist by disrupting drug trafficking through such means as stripping drug traffickers of phones used for communication, taking away vehicles that are used to transport drugs, depriving illegal drug manufacturers of equipment necessary for making controlled substances, or confiscating proceeds from the sale of drugs. Illegal behavior should not be profitable particularly when it harms the community.

Civil asset forfeiture is an excellent tool to use to disrupt drug trafficking for various reasons. One reason is that it can be difficult to determine ownership of property during a traffic stop or raid. For example, in a raid, a large amount of unbounded cash and illegal drugs in baggies may be found in a backpack with no identification. The backpack may be lying next to a large quantity of illegal drugs, baggies, and a scale. The location of these items may be in a shared space where there are multiple people and the premises is owned or leased by a limited liability corporation (LLC). Even though the evidence supports that the cash has been received in exchange for illegal drugs, determining, whether the cash belongs to the LLC or one of the individuals in the shared space or someone else entirely presents a challenge. Proceeding *in rem* allows the government to proceed with seizure and subsequent forfeiture proceedings against property used for illegal purposes even though the government is unable to establish who the property owner is.

Another challenging reality in civil asset forfeitures is that the Excessive Fines Clause of the Eighth Amendment has been applied to them. A person who is illegally trafficking drugs will not necessarily be reporting their income to the IRS or putting it in a bank, but yet law enforcement must only forfeit within these persons' stated financial abilities. Being able to forfeit lower value items allows civil forfeitures to be disruptive within the confines of the Eighth Amendment.

GCSO is mindful that seizing and forfeiting property is a great responsibility. Our agency consistently goes above and beyond what the statutes and Constitution require to ensure the due process of those with a potential interest in property seized by GCSO. This includes going beyond what the statute and Constitution require in giving or sending notices to those with potential property interests. GCSO is inclusive of the county's largest limited English proficiency (LEP) population[7] and includes a Spanish translation of all seizure notices. We also abide by the Department of Justice's safe harbor provision[8] of translating vital written

[7] Washington State Office of Financial Management, Forecasting Division. English and Other Languages Meeting Threshold in 2021 by County

[8] Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

information into every language that is used by 5% of the population or 1,000 people (whichever is less).

GCSO notes that relaying statutory language in communications is important and that deviating from statutory language puts the agency at risk if the courts should determine the "Plain-Talk" incorrectly explains something or is misleading. The change to "Plain-Talk" needs to occur in the statutes rather than agencies taking on the risk of incorrectly explaining something.

Recommendations for the Legislature

GCSO stresses that if any work group is convened to discuss the various perceived concerns presented in this report, the work group should be inclusive of various law enforcement advocacy groups including WASPC.

Recommendations for the Audited Law Enforcement Agencies

This audit identified several recommendations for the audited law enforcement agencies. GCSO will consider the recommendations made by the State Auditor.

Conclusion

GCSO is dedicated to following Washington State laws and protecting the Constitutional rights of individuals and businesses. GCSO is also dedicated to using tools such as civil asset forfeitures to disrupt people and enterprises who are out to make money at the expense of the lives of the people of Grant County.

Sincerely,

Joe Kriete
Sheriff

GRAYS HARBOR DRUG TASK FORCE
100 W Broadway Ave Ste 3, Montesano, WA 98563 | 360.249.3711 Ext. 1715

December 29, 2023

The Honorable Pat McCarthy
Washington State Auditor

RE: Grays Harbor County Drug Task Force Formal Audit Response

Thank you for sharing your draft audit results and report. As always, we appreciate that the Office of the Washington State Auditor ("SAO") continues to foster open communications to facilitate well-informed performance audits. We agree with the SAO that "protecting every Washingtonian's right to due process" is important and should be addressed. I am concerned, however, that some of the recommendations, including changing the laws surrounding the current asset forfeiture process, may allow for the proliferation of illegal narcotics in our communities and increased drug trafficking due to the ways in which suggested changes have been presented. In short, asset forfeitures are integral to addressing the illegal drug trade in Washington.

The objective of the Grays Harbor County Drug Task Force ("DTF") is to curb the effect of the use and sale of controlled substances within our community. Grays Harbor County has been disproportionately impacted by controlled substance overdoses. During the audit period, Grays Harbor County possessed the highest rate of methamphetamine deaths and the second highest rate of opioid attributable deaths, respectively. DTF has attempted to address the public safety crisis posed by controlled substances by targeting mid-level and upper-lever distributors of controlled substances. Those investigations have led to arrests, seizures, and prosecutions which have aided in the fight to eradicate an influx of cheap and potent controlled substances.

Statistics from 2020 to 2022 demonstrate that DTF interdictions led to 208 criminal arrests and include the seizure of 27 kilograms of methamphetamine; 3 kilograms of heroin; 80,257 fentanyl pills; 509 grams of fentanyl powder; and 123 grams of cocaine. The street value of all illicit substances seized by Grays Harbor Drug Task Force during the reporting period is $2.28 Million. The seized substances and the respective street values do not include additional large sums of controlled substances seized in furtherance of federal criminal investigations with the assistance of DTF.

Please find the Grays Harbor County Drug Task Force observations and response to the draft audit findings and recommendations. We appreciate that the Grays Harbor County Drug Task Force response will be incorporated in the final audit report intact.

We are particularly hopeful that our response to the draft report lends further insight, and that the SAO would consider refinements in the areas that we respectfully offer our perspectives. Of particular note, our agency would hope that the SAO address the following:

- Whether "Controlled Buys" and any associated assets seized should be characterized as "small-scale illegality" in light of their crucial function in complex drug trafficking investigations.
- What, if any, considerations have been used by the Department of Justice to enact minimum asset value thresholds for commencing asset forfeiture? How might those standards be applied in light of wholesale amounts of fentanyl and methamphetamine becoming less expensive?
- What data can the SAO provide to support the conclusion that a requirement for higher evidentiary certainty in asset forfeiture hearings would lead to more equitable proceedings for Claimants?
- What data can the SAO provide to support the conclusion that an "independent, neutral third party outside of law enforcement" would result in more equitable forfeiture hearings than the present system? How do the outcomes of the present system of hearing examiners compare with the use of Administrative Law Judges in similar proceedings?

Should you desire any clarification, please contact me at your convenience. As one of the members of the DTF Executive Board, I would be happy to coordinate the appropriate representation to assure a well-informed dialog.

Sincerely,

S. J. Strong

Chief S. Joe Strong,
Hoquiam Police Department
Grays Harbor County Drug Task Force
jstrong@cityofhoquiam.com

cc: Mr. Scott Frank, Director of Performance and IT Audit
Mr. Justin Stowe, Assistant Director for Performance Audit
Ms. Tania Fleming, Principal Performance Auditor
Ms. Sohara Monaghan, Senior Performance Auditor
Sheriff Darrin Wallace, Grays Harbor County
Chief Dale Green, City of Aberdeen
Undersheriff Kevin Schrader, Grays Harbor County

* * *

Grays Harbor County Drug Task Force Response to State Auditor's Office Performance Audit of Civil Asset Forfeiture

Key Points Overview:

The Grays Harbor County Drug Task Force again thanks the State Auditor's Office for the audit and the opportunity to respond. We emphasize, along with other law enforcement agencies in Washington State, our shared commitment to protecting civil rights as paramount to our duty as public servants. We continually seek any and all opportunities to improve our law enforcement services to the public.

The Grays Harbor County Drug Task Force serves the people of Grays Harbor County and is comprised of law enforcement officers from the Grays Harbor County Sheriff's Office, the Hoquiam Police Department, and the Aberdeen Police Department. Of the eight police agencies examined by this audit, the Grays Harbor Drug Task Force stands alone as the only audited agency focused entirely on the investigation of controlled substance distribution. Generally, task force investigations in Grays Harbor County adhere to a similar structure. Investigations often commence as the result of information obtained by law enforcement from bystanders or informants residing in the community. The community driven approach to investigation in an attempt on the part of the Drug Task Force to address the disproportionate impact of controlled substance use in our county. Deaths attributable to opioids and methamphetamine have skyrocketed in recent years. From 2021 to 2022, Grays Harbor County led Washington State with the highest number of deaths attributable to methamphetamine per 100,000 residents[1]. The number of methamphetamine-attributable deaths was more than double the average for Washington State as a whole. Similarly, from 2020 to 2022, Grays Harbor County was the county in Washington State with the second highest number of deaths attributable to opioids per 100,000 residents[2]. The number of opioid-attributable deaths was more than sixty percent greater than the average for Washington State as a whole. Accordingly, the investigations and interdictions of the Grays Harbor Drug Task Force are essential to addressing an ever-growing threat to public safety.

In addition to commencing investigations in-county, the officers assigned to DTF carry the distinction of being deputized as federal Task Force Officers. In that capacity, members of DTF work in conjunction with the Drug Enforcement Administration and other local jurisdictions to investigate and prosecute members of large drug-trafficking organizations. These collaborative investigations provide an

[1] https://adai.uw.edu/wadata/methamphetamine.htm#death_maps
[2] https://adai.uw.edu/wadata/deaths.htm#showdiv1

opportunity for our agency to stop the flow of illegal controlled substances before they can be distributed in our county.

Asset forfeitures are integral to addressing a much larger problem. Investigations and seizures protect our community. Statistics from 2020 to 2022 demonstrate that Grays Harbor Drug Task Force interdictions led to 208 criminal arrests and includes the seizure of 27 kilograms methamphetamine; 3 kilograms heroin; 80,257 fentanyl pills; 509 grams fentanyl powder; and 123 grams cocaine. The street value of all illicit substances seized by Grays Harbor Drug Task Force during the reporting period is $2.28 Million. The seized substances and the respective street values do not include large sums of controlled substances seized in furtherance of federal criminal investigations with the assistance of the Grays Harbor Drug Task Force.

The results section of SAO's report indicates that "[m]ost audited agencies used civil asset forfeiture primarily to seize cash and other property associated with small-scale illegal activity." Among the examples illustrative of small-scale illegality, the SAO report points to small-scale drug sales, including "controlled buys." The SAO report concludes that deterrence of small-scale illegal activities was not contemplated by legislators at the time civil asset forfeiture procedures were made law. Rather, the SAO's report indicates that a legislative goal of civil asset forfeiture was the disruption of large criminal organizations such as cartels.

Our agency encourages the SAO to review and revise the crimes cited by the SAO as evidence of "small-scale illegality." The DTF would like to emphasize that the controlled buys of street drugs often serve as the foundation for the investigation and prosecution of mid-level and upper-level distributors of controlled substances. Controlled buys often form the basis for search warrants for houses and vehicles used for the storage and transportation of larger quantities of controlled substances. Controlled buys which are adjacent to larger investigations should not be considered in a vacuum. Relatedly, DTF would encourage the SAO to consider the cumulative assets seized as a result of controlled buys along with any related investigations. Acknowledging that controlled buys are often adjacent to larger-scale drug crimes provides a more accurate insight into law enforcement motives. Further, the total assets seized from controlled buys and any related investigations would better characterize how law enforcement is serving to remove assets and controlled substances from drug-trafficking organizations.

The SAO report also includes discussion which serves to compare and contrast civil asset forfeiture procedures in Washington State with other states. The SAO report focused its comparison on four specific areas: (1) Procedure of due process police must follow to ensure property owners are treated fairly; (2) the

level of evidence police agencies must provide to demonstrate forfeiture was justified; (3) which party bears the burden of proof in a civil assert forfeiture proceeding; and, (4) who revives what proportion of the proceeds from sale of the property. Particular to areas (2) and (3), the SAO has provided examples where other jurisdictions have implemented procedures which tailor the scope of civil asset forfeiture proceedings and increase the level of evidence necessary to prevail at hearing. The SAO report proceeds to cite a practice of the Department of Justice, who set a minimum asset value thresholds before civil asset forfeiture may commence. Additionally, the SAO report indicates that 30 states require a level of evidentiary certainty greater than Washington's "preponderance" standard to prevail in a forfeiture hearing.

Review of the SAO analysis of areas (2) and (3) has left our agency with more questions than answers. In particular, the DTF would encourage further discussion prior to the implementation of asset value thresholds. DTF has observed the wholesale cost of methamphetamine and fentanyl drop significantly in recent years. DTF has also observed that the value of a seized asset may have a different deterrent effect relative to cost of living among counties. Accordingly, DTF would like the SAO report to address factors which have been used by the Department of Justice when setting minimum asset thresholds for civil asset forfeiture. Additionally, the Grays Harbor Drug Task Force would like the SAO to consider the addition of data which speaks to the qualitative impact of increased requirements of evidentiary certainty in asset forfeiture proceedings. Without further information, DTF is concerned that there is a lack of empirical support that increased evidentiary certainty will actually result in a equitable proceeding for civil asset forfeiture claimants.

We agree with the State Auditor's Office that we should continue to explore opportunities where the drug interdiction process could be refined to protect civil rights for innocent people, justice-involved individuals, and the public overall. Your audit presents information that would best be addressed in future discussions and policy clarification with the state legislature, along with involving a broadened engagement of the various law enforcement agencies in our state. We would be eager to participate and contribute to this important endeavor. We are all working diligently to address a crisis in our communities. We should act with transparency, responsibility, and urgency on behalf of the public that we serve.

Audit Recommendations for the Audited Police Agencies:

Audit Recommendation 10.

"To improve the likelihood property owners will receive notice of law enforcement intent to pursue forfeiture of property … Develop written guidance describing actions they expect staff to take to find the

correct address to serve notices, successfully deliver notices to the right address, and redeliver notices that come back undelivered. The guidance should include actions beyond those required in statute …"

Grays Harbor County Drug Task Force Response:

We agree with the intent of the audit recommendation. As a result of the recommendations, the Grays Harbor Drug Task Force will review our policies and procedures and consider the adoption of any recommended actions which are not already memorialized and practiced. Due to the unique nature of the Grays Harbor County Drug Task Force investigations, the named Claimants in Civil Asset Forfeiture proceedings are often also Defendants in criminal proceedings. In those instances, the Grays Harbor County Drug Task Force follows a protocol to serve written notice "in-person" where a Claimant-Defendant is being held in jail following arrest and/or while the criminal proceeding are pending. Similarly, Claimant-Defendants who are released on personal recognizance pending criminal charges are required by the Superior Court to inform the court of their address and maintain their residence as a term of pre-trial release. Any service made upon Claimant-Defendants in those instances is made by certified mail to an address provided by the Claimant-Defendant to the Superior Court. Address information is further supported by law enforcement interviews conducted with any potential claimants close in time to law enforcement seizure of an asset. In the instances that Claimant addresses are either inaccurate or not immediately apparent, the Grays Harbor County Drug Task Force utilizes a central law enforcement database or other government-maintained sources for public data to ensure that proper notice is given in a timely manner according to statute.

Audit Recommendations 11 & 12.

"To help property owners understand what they need to do to prevent their property from being forfeited … Make it a standard practice to provide notices in English and in other languages that are predominantly spoken by their local population…"

Grays Harbor County Drug Task Force Response:

We agree with the intent of the audit recommendation. The assets seized by the Grays Harbor County Drug Task Force are often derived from persons who are both Defendants in a criminal proceeding and a Claimant in a civil asset forfeiture. Where a Claimant-Defendant is being held in jail pending a criminal proceeding, the Grays Harbor County Drug Task Force follows a protocol to serve written notice "in-person." Where a claimant is not able to be served "in-person" by law enforcement, the Grays Harbor Drug Task Force will attempt to effectuate service by certified mail. The written notice served also indicates their right to claim ownership and to pursue a hearing, along with the required timeframe to act and the

applicable state laws. Claimant-Defendants have also been observed to utilize either appointed or retained criminal defense counsel to help navigate procedures associated with civil asset forfeiture. The Notice of Hearing served upon Claimants is written entirely in English. However, the notice provided clearly states procedures related to the acquisition of an interpreter for use at a civil asset forfeiture hearing. Use of interpreters is at DTF's expense for indigent claimants.

Audit Recommendation 13.

"To help property owners understand what they need to do to prevent their property from being forfeited … Add to the notice of intent to forfeit, the property owner's rights to have their case moved to court and attorney's fees reimbursed if they sought legal representation and won the case."

Grays Harbor County Drug Task Force Response:

DTF disagrees. Providing the recommended information could amount to giving legal advice, a practice specifically disallowed. DTF's notice of seizure provides their right to an administrative hearing; timelines to exercise that right; and applicable statutes for claimants to review, which clearly provide the additional information SAO recommends they receive.

SAO Recommendation to Legislature:

We agree with the SAO's recommendation that: "the Legislature convene a workgroup to consider potential improvements to the civil asset forfeiture process in Washington." The audit presents observations and recommendations that would best be addressed in future discussions and policy clarification with the Legislature, and importantly, involving a broadened engagement of the various law enforcement agencies in our state beyond just eight included in the audit. The Grays Harbor County Drug Task Force welcomes the opportunity to participate and contribute to this important endeavor. One area in particular, however, that causes some concern is Legislature Recommendation No. 2: "Designate an independent, neutral third party outside of law enforcement, to oversee forfeiture decisions." It is unclear whether this recommendation seeks to avoid using a law enforcement agency to act as hearing examiner in civil asset forfeiture hearings. A member of a law enforcement agency is uniquely qualified to address the issues raised in a civil asset forfeiture hearing – not unlike the administrative law judges found in various state agencies who are themselves employees of those agencies. If the legislature is inclined to adopt such a recommendation, we would ask that funding for an independent hearing examiner be provided. Moreover, the civil asset forfeiture scheme incorporates an appeal process, which would allow for a claimant to seek a review of the decision made by the law enforcement hearing examiner.

Port of Seattle

December 23, 2023

Honorable Pat McCarthy, Washington State Auditor
Mr. Scott Frank, Director of Performance and IT Audit
Mr. Justin Stowe, Assistant Director for Performance Audit
Ms. Tania Fleming, Principal Performance Auditor
Ms. Sohara Monaghan, Senior Performance Auditor

RE: Port of Seattle Formal Audit Response

Thank you for sharing your draft audit results and report. The Office of the Washington State Auditor has continued to foster open communications to facilitate a well-informed performance audit on civil asset forfeiture. I appreciate and agree with the intent of the SAO implied on page three of the report in "protecting every Washingtonian's right to due process." I am concerned, however, that some of the recommendations included in the SAO's report may inadvertently enable drug trafficking and the proliferation of illegal narcotics in our communities due to the ways in which suggested changes materially impact and alter the current asset forfeiture process. Asset forfeitures are integral to addressing the illegal drug trade in Washington.

Our department is one of the most unique in Washington state. Our facilities are unlike any city in our state. Seattle-Tacoma International Airport (SEA) is one of the busiest airports in North America and a major gateway for international services. Just over 50 million passengers will fly through SEA in 2023, taking advantage of flights on 31 different airlines to reach more than 90 domestic and 28 international destinations. Similarly, our asset forfeiture proceedings are unique compared to other policing agencies in the state, mainly due to the character of seized assets. The Port of Seattle Police Department at SEA Airport typically seizes either drugs or money associated with illegal narcotics. It would be incorrect to compare our department with other policing agencies that are typically dealing with seized assets also including vehicles, homes, etc. In this way, the SAO's report proposes a fundamental misunderstanding of how civil asset forfeiture works at SEA.

As a Washingtonian and law enforcement professional and leader, I have witnessed firsthand the devastating effects of drugs on the lives, families, and communities in our state. Presently, our department is on the frontline of a fentanyl public health crisis that is only getting worse. There have been over 1,060 overdose deaths involving opioids in King County this year (Source: Overdose deaths data dashboard - King County, Washington), which is hundreds more than in previous years.

Investigative techniques and interdictions protect our community. Statistics from 2019 to 2022 demonstrate that the Port of Seattle Police interdictions led to 76 criminal arrests and the seizure of 2,093 grams cocaine; 300 dosage units oxycodone; 795 grams heroin; 2,375 pounds marijuana; 23 kilograms methamphetamine; and 253,868 fentanyl pills. The street value of these illicit substances seized at SEA Airport is in excess of $9,000,000. The seizures by the Port of Seattle Police Department have reduced both harmful narcotics and the cash that is fueling this trade and damaging Washington State.

Please find as follows the Port of Seattle's observations and response to the draft audit findings and recommendations. We appreciate that the Port's response will be incorporated in the final audit report intact.

We are particularly hopeful that our response to the draft report lends further insight, and that the SAO would consider refinements in the areas that we respectfully offer our perspectives. Especially, around the audit methodology used to make predictions about a person's race/ethnicity. This methodology overshadows the intentions of the audit, and many Black and other people of color may find this type of profiling and generalization inappropriate and offensive. It is important that the tools we choose to use and predictions derived are socially responsible and does not perpetuate generalizations of and racial bias toward Black and other people of color. Accordingly, we would be happy to revise our formal response commensurate with refinements made to the final audit report.

Should you desire any clarification, please contact me at your convenience: Villa.M@portseattle.org
I would be happy to coordinate the appropriate representation to assure a well-informed dialog.

Sincerely,

Michael Villa, Police Chief
Port of Seattle

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Port of Seattle Response to State Auditor's Office Performance Audit of Civil Asset Forfeiture

Key Points Overview:

The Port of Seattle and Police Department would like to thank the State Auditor's Office for the audit. We emphasize our shared commitment to protecting civil rights as paramount to our duty as public servants. We embrace any opportunity to improve our law enforcement services to the public. This includes our commitment to mitigate any potential bias in policing, conscious or not.

The Port of Seattle Police Department is unlike any police department in the State of Washington. Our Police Department provides the primary law enforcement service to Seattle-Tacoma International Airport (SEA) and the Port's seaport facilities. The department partners closely with the Department of Homeland Security, Customs and Border Protection, Transportation Security Administration, the Federal

Bureau of Investigation, and other federal and local jurisdictions.

Our department is one of the most unique in Washington state. Our facilities are unlike any city in our state. SEA is one of the busiest airports in North America and a major gateway for international services. Just over 50 million passengers will fly through SEA in 2023, taking advantage of flights on 31 different airlines to reach more than 90 domestic and 28 international destinations. Similarly, our asset forfeiture proceedings are unique compared to other policing agencies in the state, mainly due to the character of seized assets. The Port of Seattle Police Department at SEA Airport typically seizes either drugs or money associated with illegal narcotics. It would be incorrect to associate our department with other policing agencies that are typically dealing with seized assets also including vehicles, homes, etc. In this way, the SAO's report proposes a fundamental misunderstanding of how civil asset forfeiture works at SEA.

Asset forfeitures are integral to addressing a much larger problem. Our department is on the frontline of a fentanyl public health crisis that is only getting worse. There have been over 1,060 overdose deaths involving opioids in King County this year (Source: Overdose deaths data dashboard - King County, Washington), which is hundreds more than in previous years.

The Port's drug interdiction detectives focus on domestic and international narcotics traffickers connected to the airport and seaport. These detectives investigate cases and leads to detect and monitor criminal organizations attempting to fly drugs and money separately through SEA.

Investigative techniques and interdictions protect our community. Statistics from 2019 to 2022 demonstrate that the Port of Seattle Police interdictions led to 76 criminal arrests and the seizure of 2,093 grams cocaine; 300 dosage units oxycodone; 795 grams heroin; 2,375 pounds marijuana; 23 kilograms methamphetamine; and 253,868 fentanyl pills. The street value of these illicit substances seized at SEA Airport is in excess of $9,000,000.

The Police Department takes very seriously our commitment to protecting the civil rights of any person at our airport. Since 2020, we have proactively engaged in an assessment of our procedures. In 2021, we received an independent report "Recommendations for the Port of Seattle Task Force on Policing and Civil Rights." Among the recommendations, none were raised involving the drug interdiction process. In April 2022, a cross-Port team including the Police Department determined that the majority of the highest priority recommendations were complete or underway. We are committed to continually make improvements.

We are proud to be one of eight Commission on Accreditation for Law Enforcement Agencies (CALEA) accredited agencies in the State of Washington. CALEA requires a commitment to procedural justice, ethical policing, community trust and engagement, transparency in service delivery, appropriate organizational culture, fairness in systems and processes, and consistency in what the public should expect from a law enforcement agency.

The Port of Seattle and its Police Department are committed to transparency to build trust with the public and demonstrate our commitment to civil rights, while at the same time address the public health

crisis involved with illegal drugs and related money trafficking. We report annually on engagements with the public and the status of department initiatives, presenting our reports at our Commission's public meetings and publishing to our website Port of Seattle Police Department | Port of Seattle (portseattle.org)

We agree with the State Auditor's Office that we should continue to explore opportunities where the drug interdiction process could be refined to protect civil rights for innocent people, justice-involved individuals, and the public overall. Your audit presents information that would best be addressed in future discussions and policy clarification with the state legislature, along with involving a broadened engagement of the various law enforcement agencies in our state. We would be eager to participate and contribute to this important endeavor. We are all working diligently to address a crisis in our communities. We should act with transparency, responsibility, and urgency on behalf of the public that we serve.

Predicting Race and Ethnicity of People Involved with Illegal Drugs and Money Trafficking

We agree with the auditor's observation that no demographic (racial/ethnic background) information is collected during the interdiction process by law enforcement. We also respect that there is interest to understand whether there are any disparities experienced by Black and other people of color in the interdictions. We agree with the recommendation made to the state legislature to have law enforcement agencies track specific data including the demographics of people who faced civil asset forfeiture. However, the auditor has gone further and taken on an extremely complex task to predict people's race/ethnicity and establish a baseline "population" assigned to the audited law enforcement agencies, with which to predict the racial characteristics of individuals involved in drug interdictions and related money trafficking.

The audit methodology used to make predictions about a person's race/ethnicity, by associating their last name with the demographics of the geographic areas that they reside, risks profiling people and generalizing of Black and other people of color. The predictions are applied in the audit to indicate the extent to which Black and other people of color are involved in activity associated with illegal drugs and money trafficking. This overshadows even the best of intentions to turn the point around, as the SAO clarified with auditees during the technical review phase, to suggest Black and other people of color as victims of the way forfeitures are handled. Many Black and other people of color may find this type of profiling and generalization inappropriate and offensive. It is important that the tools we choose to use and predictions derived are socially responsible and does not perpetuate generalizations of and racial bias toward Black and other people of color. Despite the arguments made on the statistical viability of the predictive tools used, because we can does not always mean we should. Especially when we go as far as associating certain racial/ethnic groups to illegal drugs and money trafficking activities based on educated guesses in a public document.

Moreover, the criteria that law enforcement agencies are being audited against is not clear. We are not aware of any legal or legislative intent that expects the enforcement of law to impact people proportionate to the racial/ethnic demographics of the state's population. We embrace any opportunity to improve our law enforcement services to the public. This includes our commitment to mitigate any

potential bias in policing, conscious or not. We must acknowledge and take responsibility for the inferences that these statistically derived predictions create. Especially if these assumptions infer to the public, even if not intentional, racial bias by our valued law enforcement agencies. This instigates negative public perception and reaction toward our dedicated women and men in law enforcement. The Port of Seattle Police Department follows a robust investigative process that applies a broad set of criteria to determine pursuing interdiction cases. Race or ethnic background is not a factor when applying these established law enforcement protocols. The Police Department made the detailed protocols fully available to the auditor. We, along with perhaps other law enforcement agencies audited, would have welcomed any assessment by the auditor on whether any aspect of our protocols contributes in any way to the disparity and impacts purported in the audit. We are glad that when asked at the December 15, 2023 joint audit exit meeting, the SAO affirmed that there was no bias found in the law enforcement agencies interdiction process. Importantly, the SAO also acknowledged that there are major socioeconomic factors well beyond the control of law enforcement that contribute to the disparities purported in the audit. We request that these points are indicated in the final audit report.

Audit Recommendations for the Audited Police Agencies:

Audit Recommendation 10. "To improve the likelihood property owners will receive notice of law enforcement intent to pursue forfeiture of property … Develop written guidance describing actions they expect staff to take to find the correct address to serve notices, successfully deliver notices to the right address, and redeliver notices that come back undelivered. The guidance should include actions beyond those required in statute …"

Port of Seattle Response: We agree with the intent of the audit recommendation. We will review documentation of our protocols and make refinements where necessary to guide completeness and consistency in practice. The Port of Seattle Police Department follows a protocol to immediately serve written notice "in-person" while the individual is present. We also consistently follow a good practice to ask for their address in-person at that time. It is noteworthy, however, that in some cases our experience has been that individuals do not provide an accurate address. Where inaccurate addresses are experienced, law enforcement agencies have access to a central law enforcement data base to assist with locating addresses. The Port of Seattle Police Department fully utilizes this resource when deemed necessary.

Audit Recommendations 11. and 12. "To help property owners understand what they need to do to prevent their property from being forfeited … Make it a standard practice to provide notices in English and in other languages that are predominantly spoken by their local population and have their notice templates reviewed and improved for plain talk."

Port of Seattle Response: We agree with the intent of the audit recommendation. The Port of Seattle Police Department follows a consistent protocol to serve written notice of seizure and intended forfeiture in-person while the individual is present. The written notice served also indicates their right to claim ownership and to pursue a hearing, along with the required timeframe to act and the applicable state laws. We also leverage this in-person, two-way interaction, setting to confirm that they understand their rights and offer language interpretative support should they desire. The Port of Seattle

Police Department utilizes various resources to communicate in the individual's primary spoken language to support their full understanding. This would include the Language Line which is a 24x7 language interpretive service staffed by certified linguists, available to law enforcement agencies, along with utilizing bi-lingual officers on our police force as well as our federal counterparts present on-site at SeaTac International Airport. Our intent is to support that all individuals are fully aware of the situation they face and fully understand their rights through in-person communication that augments the written notice of seizure and intended forfeiture presented at the time.

Audit Recommendation 13. "To help property owners understand what they need to do to prevent their property from being forfeited … Add to the notice of intent to forfeit, the property owner's rights to have their case moved to court and attorney's fees reimbursed if they sought legal representation and won the case."

Port of Seattle Response: We agree in part. When the written notice is served in-person that indicates their right to claim ownership and to pursue a hearing, along with the required timeframe to act and the applicable state laws, the notice also indicates their right to a hearing. The hearing is conducted by an independent hearing examiner. At the time of the hearing and determination, the individual is also informed of their right to further challenge the decision and pursue the matter in district court. We should be careful involving ourselves as law enforcement agencies in matters that are most appropriately decided in a court of law, such as providing assurances of attorney fees being reimbursed depending on the outcome of a trial which is ultimately the judgement and award to be decided by the court.

SAO Recommendation to Legislature: We agree with the SAO's recommendation that: "the Legislature convene a workgroup to consider potential improvements to the civil asset forfeiture process in Washington." The audit presents observations and recommendations that would best be addressed in future discussions and policy clarification with the Legislature, and importantly, involving a broadened engagement of the various law enforcement agencies in our state beyond just eight included in the audit. The Port of Seattle welcomes the opportunity to participate and contribute to this important endeavor.

SPOKANE COUNTY SHERIFF

SHERIFF JOHN F. NOWELS

"In partnership with the community - Dedicated to your safety"

December 20, 2023

The Honorable Pat McCarthy

Washington State Auditor

P.O. Box 40021

Olympia, WA 98504-0021

Re: SAO

Dear Auditor McCarthy,

Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) performance audit report, "Civil Asset Forfeiture Performance Audit."

The Spokane County Sheriff's Office appreciates improving protections for property owners while ensuring that law enforcement agencies can use civil asset forfeiture to help reduce organized crime. Your team's analysis identifies areas where both goals can be improved.

The Spokane County Sheriff's Office will develop written guidance on the service of asset forfeiture notices. Our agency will also ensure the notices are easily understandable and will be available in other languages. We look forward to your team's input regarding a standard notice that meets all the criteria.

Regardless of policy changes that the Legislature may adopt, the Spokane County Sheriff's Office's goal is to protect property owners and strengthen transparency regarding civil asset forfeitures.

Thank you for the opportunity to review the report.

Sincerely,

Sheriff John Nowels

O (509) 477-4739 | F (509) 477-5641 | 1100 W MALLON AVE. | PUBLIC SAFETY BUILDING | SPOKANE, WA 99260-0300

OFFICIAL SPOKANE COUNTY SHERIFF'S OFFICE RESPONSE TO CIVIL ASSET FORFEITURE PERFORMANCE AUDIT-DECEMBER 20, 2023

This response to the State Auditor's Office (SAO) performance report received on November 20, 2023, is provided by the Spokane County Sheriff's Office.

SAO PERFORMANCE AUDIT OBJECTIVES:

The purpose of this performance audit was to answer the following questions:

1. What are the characteristics of civil asset forfeitures conducted by law enforcement agencies?

2. What opportunities exist to address due process concerns in the state's civil asset forfeiture program?

SAO RECOMMENDATIONS TO THE SPOKANE COUNTY SHERIFF'S OFFICE:

1. Develop written guidance describing actions they expect staff to take to find the correct address to serve notices, successfully deliver notices to the right address, and redeliver notices that come back undelivered. The guidance should include actions beyond those required in statute, including:

   - The databases, documents, and other resources staff should check to identify the correct address
   - The service methods staff should use to deliver the notice (such as in-person, regular and certified mail)
   - The follow-up measures staff should take to redeliver notices that are returned undelivered (such as sending notices to other known addresses, attempting in-person delivery, or making phone calls)

2. To help property owners understand what they need to do to prevent their property from being forfeited, we recommend police agencies:

   a) Make it a standard practice to provide notices in English and in other languages that are predominantly spoken by their local population

   b) Have their notice templates reviewed and improved for plain talk

   c) Add to the notice of intent to forfeit, the property owner's rights to have:

      i. Their case moved to court

      ii. Attorney's fees reimbursed if they sought legal representation and won the case

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SPOKANE COUNTY SHERIFF'S OFFICE RESPONSE:

1. Develop a written policy that outlines the steps necessary to ensure the notices are successfully served. The policy will include the following:
    - In-person service is the preferred method of delivering notices
    - Regular and certified mail will be used to deliver notices that cannot be served in person.
    - Which databases, documents, or other resources are used to locate addresses to send the notices.
    - What follow-up measures are necessary if notices are returned undelivered.

2. Adjust the current notice to help property owners understand what they need to do to prevent their property from being forfeited to include the following:
    - Provide the notice in another language if applicable.
    - Add the property owner's right to have their case moved to court and attorney's fees reimbursed if they win the case.
    - Adopt the notice template provided by the SAO.

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LEGAL DEPARTMENT
200 South Third Street
Yakima, Washington 98901-2830

December 28, 2023

The Honorable Pat McCarthy
State Auditor
Washington State Auditor's Office
P.O. Box 40021
Olympia, WA 98504-0021

Re: Civil Asset Forfeiture: Strengthening Transparency and Protections for Property Owners

Dear Auditor McCarthy:

The City of Yakima takes this opportunity to respond to the Civil Asset Forfeiture: Strengthening transparency and protections for property owners performance audit. The audit contains a number of recommendations, some of which we agree will add to the existing due process rights of people who may have an interest in seized property. We also agree strengthening reporting requirements will add to the transparency of asset forfeiture programs. However, Yakima does have strong criticisms to parts of the formal response report.

While the report refers to asset forfeiture as a whole, it is important to note this report only considers asset forfeiture pursuant to the Revised Code of Washington (RCW) 69.50.505. There are many different RCW sections that allow for assets to be forfeited with many different procedures and requirements. For instance, RCW 10.105 allows for seizure and forfeiture related to property used in the commission of a felony only after there is a conviction for a crime related to the property. RCW 46.61.5058 allows for vehicles to be forfeited upon a second DUI or physical control conviction within seven years but again, only after a conviction. RCW 9.68A.120 allows for forfeiture of property related to matters depicting minors engaged in sexually explicit conduct only after a hearing before an administrative law judge. Forfeiture statutes may also have restrictions such as, the proceeds must first go to pay victims prior to law enforcement retaining assets.

A second criticism involves transparency about how this audit began and the biases associated with that decision. The audit was directed by stakeholders who have criticisms of asset forfeiture. This audit was not born out of curiosity, a desire to learn asset forfeiture, or as part of a random procedure to evaluate programs within the state. It is evident the stakeholders have a preconceived position and the SAO audit process was used to support the position. This is apparent throughout the report as I will point out in this response.

Civil Division (509) 575-6030 • Prosecution Division (509) 575-6033 • Fax (509) 575-6160

In multiple places throughout the report are misstatements of the law. One can only presume this is done to persuade readers in a biased way to a biased conclusion. Consistent is the statement that law enforcement can seize property that they *believe* has been involved in or is the proceeds of a crime. There are clear legal standards law enforcement must follow to seize evidence and, as related to asset forfeiture for drug crimes, can be found in RCW 69.50.505(2). Law enforcement may seize personal property only incident to arrest or a search warrant, both of which require probable cause and a precondition of arrest or warrant. The second most common justification for seizure is when the law enforcement officer has probable cause that the property was used or is intended to be used in violation of RCW Chapter 69. This is developed over the course of an investigation and requires evidence that supports probable cause.

Another misstatement of law in this report is that owners of property have to present evidence to get property back. RCW 69.50.505(5) places the burden on the law enforcement agency with the statement, "In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture." If the law enforcement agency cannot meet this legal burden, the property is returned. It is only after law enforcement meets its burden, a claimant may choose to present an affirmative defense. RCW 69.50.506 places the burden of proof for an exemption or exception upon the person claiming it. This is consistent with all other areas of law, including criminal law where people are subject to jail and the loss of many constitutional rights.

A third area of concern is the report dedicates a number of pages reporting how agencies retain seized funds and the various problems associated with that. But for a brief mention, the report leads readers to believe forfeited funds can be used to support the individual law enforcement agency or the City/County the agency belongs to. The reality is these funds are restricted by RCW 69.50.505(10) to be used exclusively for the expansion and improvement of controlled substances related law enforcement activity and cannot be used to supplant preexisting funding sources. In addition, like all government assets, these funds are subject to audit by the state to ensure compliance with state law.

One important area the report addresses is due process. Under the banner of "due process" the report examines Constitutional rights, burden of proof, the responsibility of law enforcement agencies to relay statutory rights, conviction rates, and something referred to as plain-talk.

This report examines the burden of proof for asset forfeiture and concludes the burden needs to be a higher standard. It is difficult to determine what evidence supports this conclusion or if the recommendation is made to be in compliance with stakeholder criticisms. The audit found Washington State to be in the plurality with its burden of proof. This means that the most number of states use preponderance of the evidence for asset forfeiture. The report fails to consider other burdens of proof as applied within Washington State law to make the determination that asset forfeiture should be on par with those areas of law. Beyond a reasonable doubt applies to criminal cases where a person can lose their freedom and numerous other rights. Termination of parental

rights requires clear, cogent, and convincing evidence. Almost every area of law where there is a dispute regarding property, including money, is governed by preponderance of the evidence. Without evidence or justification why asset forfeiture should have a higher burden of proof, the recommendation is still made to place the potential loss of property equal to criminal defendants losing their freedom or parents having their children taken from them. However, in my experience prosecuting asset forfeiture cases, raising the burden of proof will have no impact on forfeitures since there is overwhelming evidence supporting the decisions to seize and forfeit pursuant to RCW 69.50.505.

There is a claim that property owners are treated as bystanders and lack constitutional rights. Even acknowledging asset forfeiture is a civil case generally following administrative laws, the report attempts to compare criminal case protections afforded to criminal defendants to anyone claiming an ownership interest in property. The claims are not entirely accurate as to the rights compared. For instance, the report claims there is no right to protect oneself from self-incrimination. The reality is that someone can refuse to testify in a civil matter as to criminal matters. The only difference is that the decision maker may make inferences from that. A second important protection against self-incrimination is the ability to continue an asset forfeiture proceeding while a criminal case is pending. This right is well established in case law and is designed so that a claimant doesn't jeopardize their criminal case in a civil asset forfeiture case.

A second important right is the presumption of innocence. While this term is applied to criminal cases when a person is charged with a crime, it essentially is applied to all cases where there is a burden of proof. In an asset forfeiture case, the property is "innocent" until the law enforcement agency presents enough evidence to meet its burden. The concept works exactly the same in both areas.

Another right in the report used to criticize asset forfeiture is the right to have an attorney provided at public expense. As a right, it is recognized that individuals charged with crimes punishable by jail are eligible for an attorney at public expense to represent them if they are indigent. That right has been expanded to include dependency actions but traditionally obtaining a "free" attorney has been completed through access to justice organizations such as Columbia Legal Services, the Northwest Justice Project, and Volunteer Attorney Services. As a comparison, government legal cases against individuals generally do not apply the right of an attorney appointed at public expense. These include infraction cases, land use cases, civil nuisance cases, code violation cases, and collection of debt cases. Asset forfeiture cases are more akin to these than they are criminal and dependency actions.

A criticism within the report used to support change is the conviction rate for a related criminal case. Other agency data was not shared but the information used for Yakima is misleading. This is something we pointed out to the audit team throughout the process but was not included in the final report. The City of Yakima takes the position that everyone who could possibly have a claim will get served. This includes passengers in vehicles that are seized even if they are not a suspect,

people located in houses that are searched even if they are just guests, previous owners of vehicles where the vehicle had been sold but title not transferred, and anyone mentioned in interviews that may have a claim for an interest. As an example, in one case, we served six different individuals in an effort to protect due process rights when the case only had one suspect. Simply put, we intentionally overserve the number of individuals to make sure they have the ability to preserve their rights. A second reason why this metric is not accurate is the length of time criminal cases take to reach resolution. This is briefly mentioned in the report but not factored into the ultimate conclusions. For instance, almost all of the 2022 asset forfeiture cases that have criminal charges were still pending at the time the information was submitted but reported in a way that is misleading about conviction rates. A more proper measuring tool would be how many cases have resolved and resulted in a conviction.

The conclusion that forfeitures are generally of low value is lacking the necessary information to make that determination. The report sets the amount of low value at $2,000 and under. Yakima Task Force Officers indicate that under current market conditions, $2,000 can purchase approximately one pound of methamphetamine or two thousand fentanyl pills. Categorizing this as low value does not seem appropriate. Furthermore, the amounts seized do not relate to either transparency or due process which are cited in the report as factors for the audit.

Because other agency data and statements were not shared, it is difficult to determine if there are factual basis for many of the conclusions contained within the report. For instance, the conclusion that the forfeitures are associated with petty crime and small time trafficking comes from the fact that cases did not specifically state the property was seized from criminal organizations, that each case had few people involved, and that the property seized was of low value. The audit does not consider the facts of each case such as, quantity of illegal narcotics involved in the case or if there are related cases in other jurisdictions involving the same person(s).

One recommendation that Yakima supports is changing who can serve as the hearing examiner. There are inherent conflict arguments when a member of the law enforcement agency is the hearing examiner. What we do want to point out though is the report only found that three of the eight audited agencies had an internal hearing examiner. Rather than rely on inherent appearance of conflict, the report expands the conflict to include agencies that contracted with an outside hearing examiner as being a problem. This is a weak argument that would apply to a county judge acting as a hearing examiner for a county agency simply because they are employed by the same jurisdiction. While we agree with some of these recommendations, it is important to point out where the report is manipulated because of bias to support the conclusions.

A national criticism of asset forfeiture is that allowing agencies to retain the proceeds of asset forfeiture creates an incentive to further pursue asset forfeiture. This in itself should not be a criticism. Agencies that illegally forfeit property or illegally expend funds should be held accountable. However, agencies following the law regarding asset forfeiture should not be compared to those who are violating the law. I would also point out that the evidence gathered in

this report would tend to show agencies in Washington State defeat this criticism. First, asset forfeiture has been going down, not up. Second, most of the agencies audited retain asset forfeiture proceeds that equal less than 1% of their budgets. But instead of recognizing Washington law enforcement agencies for this, the report uses national arguments to redirect proceeds when it is clear they are not needed here.

In the guise of due process, the report spends multiple pages applying a plain talk standard specific to state agencies to document local law enforcement agencies use in asset forfeiture cases. Plain Talk/Executive Order 05-03 was issued by former Governor Christine Gregoire as a customer service policy. It is being used in this report as due process considerations. I can find no law or court has applied this standard and it appears to be novel by the audit committee. While Yakima points this out, we welcome the state creating recommended forms for local law enforcement agencies to use that may make it easier for the public to understand.

While the report finds the agencies are following due process, the report makes further recommendations regarding notices sent to interested parties. Because the finding that agencies are following due process is not enough, there are recommendations to include additional rights in the notice that interested parties may have. As shown by the report, agencies have made sure to consider all due process rights as required by law. Given our legal system is still adversarial, making one party that is on an opposite side of a case inform an adverse party of their rights is unique. Typically, that responsibility lies on a judge, a person's attorney, the person themselves, or the hearing examiner in administrative cases.

As to the specific recommendations, Yakima offers the following responses.

Yakima Response to the Audit Recommendation to the Legislature: Yakima agrees with many of the recommendations to improve transparency. As noted above, we disagree with some of the recommendations under No. 1 and are compliant with the others. We agree with recommendation No. 2 and disagree with recommendation No. 3 as not needed.

Recommendations for the audited police agencies.

Audit Recommendation No. 10. Develop written guidance to ensure successful delivery of notices.

Yakima Response: The practice of detectives in Yakima is to first attempt to personally serve the Notice of Seizure and Intended Forfeiture ("Notice"). While this cannot be accomplished every time, they will then search multiple databases to determine possible addresses and send the Notice to all known recent addresses. Detectives will also send a Notice to addresses they believe interested parties to reside gained through surveillance and through interviews of witnesses and suspects. All mailing of Notices is accomplished through certified mail return receipt tracking.

Audit Recommendation No. 11. Provide notices in other languages that are predominantly spoken in the local population.

Yakima Response: Yakima provides the Notice in English and Spanish, which is the other predominantly spoken language in our local population. This has been our practice since the beginning of our asset forfeiture program.

Audit Recommendation Nos. 12 and 13. Notices should comply with plain talk standards and should include additional rights.

Yakima Response: Notices are carefully drafted to include statutory mandated requirements. The Notice incorporates direct legislative language, which includes the RCW citation for interested parties to review upon their choosing. We believe it would be improper, and potentially misleading, for law enforcement agencies to create their own language interpretations of forfeiture statutes but would welcome state recommended template notices.

Sincerely,

Bronson Faul
Senior Assistant City Attorney

cc: Robert Harrison, City Manager
Matthew Murray, Chief of Police
Rafael Sanchez, Sergeant, YPD

State Auditor's Response

As part of the audit process, our Office provides a final draft of our reports to audited agencies and offers management an opportunity to respond. Those responses are included in every published audit report. For this audit, these agencies were:

- One state agency: Washington State Patrol
- Four police departments: Centralia PD, Seattle PD, Port of Seattle PD, Yakima PD
- Two sheriff's offices: Grant County Sheriff's Office, Spokane County Sheriff's Office
- One task force: Grays Harbor County Drug Task Force

In this case, not every agency chose to respond; of those that did, their responses are included on pages 50-84 of this report.

The responses from some agencies expressed areas of concern and disagreement with the report's findings, conclusions or recommendations. For all performance audit reports, Generally Accepted Government Auditing Standards, which are published by the U.S. Government Accountability Office, require us to consider the areas of disagreement and determine whether our audit report should be adjusted. If we determine an adjustment is not appropriate, audit standards require us to explain why. This response serves as our explanation. We summarize the responsive agencies' main concerns below and explain our reasoning.

The independence of the audit

Two agencies questioned the independence of the audit and expressed concerns about bias. Their concerns focused on who we solicited input from in planning the audit and the aspects of our findings, conclusions and recommendations that are critical of civil asset forfeiture in Washington. We take our independence and impartiality seriously. This is a serious allegation, and one that is without merit.

As part of audit planning, the auditors solicited input from many stakeholders to obtain a variety of perspectives on civil asset forfeiture. These included stakeholders that were more likely to support civil asset forfeiture (such as the Washington Association for Sheriffs and Police Chiefs and the Washington Association of Prosecuting Attorneys), as well as those that were more likely to have concerns or be opposed (such as the Institute for Justice and the American Civil Liberties Union). Our outreach also included stakeholders who represent communities at large, including the Association of Washington Cities, the Washington State Association of Counties, the Governor's Office and individual legislators. The purpose of conducting robust stakeholder outreach is to ensure that all sides are heard. That we spoke to sources that some agencies disagreed with is a sign of balanced outreach, not bias.

Our stakeholder outreach efforts informed how we approached auditing the topic of civil asset forfeiture. However, our findings, conclusions and recommendations about the issue are not based on stakeholders' opinions, whether those groups supported or opposed civil asset forfeiture. Rather, the auditors have obtained and documented sufficient, appropriate evidence to support each finding set out in the report, in accordance with Generally Accepted Government Auditing Standards. Our Office has established a robust peer-reviewed quality control process to ensure our audit reports meet those standards.

Recommendations to the Legislature

Most of the responding agencies commented on our recommendation that the Legislature convene a workgroup to consider potential changes to the civil asset forfeiture laws.

We recognize that civil asset forfeiture can be a useful tool in deterring crime and that it is a complex process. Nonetheless, its use has raised concerns about transparency and safeguards for property owners. Washington's laws give law enforcement agencies more latitude in its application than do those of many other states. We concluded that the Legislature should consider whether the system is working as intended.

Given the complexity of this issue, we recommended the Legislature convene a workgroup of stakeholders to help with that determination. While we did not specify the participants in the workgroup, we would expect that law enforcement would be represented as one of the key stakeholders in the process.

Demographic analyses

Some of the responding agencies expressed concerns about the validity, appropriateness and precision of our demographic analyses. Below, we address three specific issues.

1. **Validity and appropriateness of the method used for estimating the race or ethnicity of people whose property had been forfeited**

   The Bayesian Improved Surname Geocoding method uses census data on surnames and the racial and ethnic makeup of geographic locations to predict a person's race or ethnicity. It is regularly used by research institutions and other government agencies to study racial patterns when such information is not directly available. We acknowledge the tool has its limitations, which are described in Appendix B.

2. **Appropriateness of comparing the demographic makeup of people whose property was forfeited to the demographic makeup of each agency's community**

   While there are no laws that require agencies to apply asset seizure and forfeiture in proportions that are similar to the makeup of the local population, such comparisons are useful to better understand how people of different races and ethnicities are affected by the system.

   We used the demographics of each agency's jurisdictional area as comparison because that is where the agencies operate and where the largest number of people who faced forfeitures live. We adjusted our method of comparison where appropriate. For example, for the Port of Seattle Police Department, we adjusted our method to account for different states of residence due to the agency's broad jurisdictional authority and the large proportion of affected people who lived outside Washington. However, for the City of Centralia Police Department, it was not appropriate to adjust our method because the agency's jurisdictional area is Centralia and many of the affected people lived in Centralia.

3. **Precision of the race and ethnicity estimate**

   The Grant County Sheriff's Office asserted that the share of Asian/Pacific Islander people involved in civil asset forfeiture in its jurisdiction was overstated due to two illegal cannabis-growing operations in which they served notices of seizure to all 32 people involved because it was not clear who owned the property. The agency also contends that its involvement in these two cases arose from partner agencies outside of Grant County.

   The two cases Grant County refers to included a substantial amount of property – vehicles, equipment, cash, weapons and personal property with a total worth of more than $100,000 – that the agency forfeited automatically. Given the quantity and value of property forfeited, we deemed it highly likely that many (if not all) of the people involved in these cases may have ownership interest of the property, and it was therefore appropriate to include them in the analysis. We cannot adjust the estimated share of Asian/Pacific Islanders involved in Grant County's civil asset forfeitures without evidence that demonstrates someone who was served a notice did not own the property forfeited.

   Furthermore, we included these two cases in our analysis because the agency claimed these cases as its own in the data it provided to the State Auditor and in forfeiture reports it submitted to the State Treasurer.

Conviction rate analysis

Some agencies stated that "over-serving" notices (the practice of sending a forfeiture notice to any party that might have an ownership interest in the property), as well as other factors, affected their conviction rates.

We acknowledge and have included in the report potential factors that may affect whether someone who faces civil asset forfeiture is eventually convicted of a crime related to the forfeiture. However, we cannot adjust the conviction rate for these factors without sufficient and appropriate evidence to do so. For example, without evidence that shows someone who was served a notice did not own the property forfeited, we cannot validate whether "over-serving" notices actually occurred so that we could legitimately remove the person from the analysis.

Given that most forfeiture cases during the review period involved just one person, we believe the conviction rate in the report is an accurate representation of the percentage of people who faced civil asset forfeiture with the audited agencies and were convicted of a crime related to the forfeiture.

Appendix A: Initiative 900 and Auditing Standards

Initiative 900 requirements

Initiative 900, approved by Washington voters in 2005 and enacted into state law in 2006, authorized the State Auditor's Office to conduct independent, comprehensive performance audits of state and local governments.

Specifically, the law directs the Auditor's Office to "review and analyze the economy, efficiency, and effectiveness of the policies, management, fiscal affairs, and operations of state and local governments, agencies, programs, and accounts." Performance audits are to be conducted according to U.S. Government Accountability Office government auditing standards.

In addition, the law identifies nine elements that are to be considered within the scope of each performance audit. The State Auditor's Office evaluates the relevance of all nine elements to each audit. The table below indicates which elements are addressed in the audit. Specific issues are discussed in the Results and Recommendations sections of this report.

I-900 element	Addressed in the audit
1. Identify cost savings	**No.**
2. Identify services that can be reduced or eliminated	**No.**
3. Identify programs or services that can be transferred to the private sector	**No.**
4. Analyze gaps or overlaps in programs or services and provide recommendations to correct them	**No.**
5. Assess feasibility of pooling information technology systems within the department	**No.**
6. Analyze departmental roles and functions, and provide recommendations to change or eliminate them	**Yes.** The audit analyzed who makes forfeiture decisions and recommends the decision be made by a neutral third party outside the police agency that is seeking forfeiture.

I-900 element	Addressed in the audit
7. Provide recommendations for statutory or regulatory changes that may be necessary for the department to properly carry out its functions	**Yes.** The audit examined the state civil asset forfeiture law and recommended changes that would provide greater protections for people facing civil asset forfeiture.
8. Analyze departmental performance data, performance measures and self-assessment systems	**No.**
9. Identify relevant best practices	**Yes.** The audit identified practices legal experts recommend for due process and legal changes other states have adopted to provide more protections to people facing civil asset forfeiture.

Compliance with generally accepted government auditing standards

We conducted this performance audit under the authority of state law (RCW 43.09.470), approved as Initiative 900 by Washington voters in 2005, and in accordance with generally accepted government auditing standards as published in *Government Auditing Standards* (July 2018 revision) issued by the U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The mission of the Office of the Washington State Auditor

To provide citizens with independent and transparent examinations of how state and local governments use public funds, and develop strategies that make government more efficient and effective. The results of our work are widely distributed through a variety of reports, which are available on our website and through our free, electronic subscription service. We take our role as partners in accountability seriously. We provide training and technical assistance to governments and have an extensive quality assurance program. For more information about the State Auditor's Office, visit www.sao.wa.gov.

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Appendix B: Objectives, Scope and Methodology

Objectives

The purpose of this performance audit was to answer the following questions:

1. What are the characteristics of civil asset forfeitures conducted by law enforcement agencies?
2. What opportunities exist to address due process concerns in the state's civil asset forfeiture program?

For reporting purposes, the audit results have been organized into key findings. The messages relate to the original objectives as follows:

- Civil asset forfeiture for the audited agencies typically involved property of low value and it disproportionately affected some racial and ethnic groups (pages 20-29) – This finding addresses Objective 1.
- The state's civil asset forfeiture law gives police broad authority and few protections to property owners (pages 30-37) – This finding addresses Objective 2.
- Audited agencies followed requirements of due process, but could do more to help people receive notice and understand how to reclaim property (pages 38-43) – This finding addresses Objective 2.
- State law does not require audited agencies to collect some key data on civil asset forfeiture nor make the data they do collect available online (pages 44-45) – This finding addresses Objective 1.

Scope

This performance audit examined civil asset forfeiture activity, including what has been seized for forfeiture, from whom, and how the proceeds from forfeitures were used. The audit also examined the due process selected agencies provided to people involved in civil asset forfeitures. We selected eight police agencies based on factors such as civil asset forfeiture activity and revenue, geographic location and type of agency. We selected the following eight law enforcement agencies:

- Four police departments: Centralia PD, Port of Seattle PD, Seattle PD, Yakima PD
- Two sheriff's offices: Grant County Sheriff's Office, Spokane County Sheriff's Office
- One state agency: Washington State Patrol
- One task force: Grays Harbor County Drug Task Force

Methodology

To answer our audit objectives, we used a variety of quantitative and qualitative methods, which are outlined below. We obtained the evidence used to support the findings, conclusions, and recommendations in this audit report during our fieldwork period (March to July 2023), with some additional follow-up work afterward. We have summarized the work we performed to address each of the audit objectives in the following sections.

Objective 1: What are the characteristics of civil asset forfeitures conducted by law enforcement agencies?

We sought to understand the characteristics of civil asset forfeitures in Washington. This data is not collected statewide or in a uniform manner, so our analysis was limited to available data from the eight police agencies included in the audit.

We asked audited agencies to provide data for all civil asset forfeitures that occurred in calendar years 2020 through 2022. We did reliability testing, including comparing the data to civil asset forfeiture reports agencies submitted to the State Treasurer's office. We determined that the data agencies provided was sufficiently reliable for our analysis.

Race and ethnicity analysis

Predicting race and ethnicity for people who faced civil asset forfeiture

Audited police agencies do not collect race and ethnicity information, so we used a predictive method – the Bayesian Improved Surname Geocoding method – to predict the race and ethnicity of people who faced civil asset forfeiture. This approach has been used by research institutions and other government agencies, including the RAND Corporation and the Consumer Financial Protection Bureau, when individuals' races and ethnicities were unavailable. The method uses census information on surnames and the racial and ethnic makeup of geographic locations to predict someone's race.

The method applies Bayes' Theorem by taking the percent of racial/ethnic groups with a particular name and living in a particular area to make a prediction of any person's race or ethnicity. For example, considering only last names, if 70 percent of residents with the last name "Johnson" indicated they were white in the U.S. census, and 30 percent indicated they were Black, the method would calculate a 70 percent probability that a person named "James Johnson" is white. However, the method also considers the racial makeup of the individual's location. If residents in the area James Johnson lives in are predominantly Black, the calculation would increase the probability the person is Black. The method determines the probability a person is a member of six racial/ethnic groups: Hispanic; non-Hispanic white; non-Hispanic Black; non-Hispanic Asian/Pacific Islander/Native Hawaiian, non-Hispanic Native American/Alaska Native, and non-Hispanic multiracial.

We predicted the race and ethnicity for more than 99 percent of the people involved in civil asset forfeitures with the audited agencies. Typically, the method accounts for 90 percent of names. But by following ideas drawn from a private study published in Harvard University's Dataverse (a repository of academic research), we were able to match additional names by incorporating first name data into our analysis. The RAND Corporation estimates that the method is between 90 percent and 96 percent

accurate when predicting Hispanic, white, Black and Asian/Pacific Islander individuals. It is far less accurate for Native Americans and multiracial individuals.

This is not the first time our Office has applied the Bayesian Improved Surname Geocoding method. We used this method in the performance audit Evaluating Washington's Ballot Rejection Rates to predict a voter's race and ethnicity when this information was not available.

After the conclusion of the audit, Seattle Police Department employees said that the agency does collect race and/or ethnicity data for some of the people who faced civil asset forfeiture with the agency. However, the agency did not provide this data for analysis during the fieldwork period of this audit.

Comparing race and ethnicity of people who faced civil asset forfeiture to the race and ethnicity of the local population

To compare the predicted race and ethnicity of people who faced civil asset forfeiture to the race and ethnicity of the local population, we used U.S. census data for the jurisdiction of the police agency. This method varied slightly for three of the audited agencies: Washington State Patrol, Grays Harbor County Drug Task Force and the Port of Seattle Police Department.

- The race and ethnicity of the overall Washington state population was used as the comparison for Washington State Patrol since its jurisdiction covers the entire state.
- The Grays Harbor County Drug Task Force includes three jurisdictions: Grays Harbor County, Aberdeen and Hoquiam. We calculated a weighted average of the race and ethnicity for these localities to create a comparison population for this agency.
- The Port of Seattle Police Department sometimes seizes property belonging to people who come from other states. We calculated a weighted average of the race and ethnicity for the states of residence for people involved in civil asset forfeitures with the Port of Seattle Police Department (based on number of cases from each state) to create a comparison population for this agency.

For six of the eight audited agencies, we used the local population demographics as comparison (rather than the demographics of the entire state or some other population) because most of the people from whom property was seized lived in the agency's local jurisdiction. Also, while police agencies may sometimes seize property from people who live elsewhere, they most commonly interact with their own local residents.

Civil and criminal outcome analysis

To better understand the outcomes from civil asset forfeiture cases and whether there were also criminal charges associated with those cases, we analyzed civil and criminal outcome data provided by the audited agencies. We created standardized categories for civil and criminal case outcomes to ensure consistency among audited agencies when determining the percentage of forfeitures that had specific civil and criminal outcomes. The civil outcome categories included:

- Federal forfeiture
- Pending
- Property forfeited after a hearing
- Property forfeited by default
- Property returned after a hearing
- Property returned without a hearing
- Settlement before a hearing
- Case appealed
- Unknown

The criminal case outcomes categories included:

- Arrested
- Charged
- Convicted
- None/Dismissed
- Pending
- Prosecuted
- Referred for criminal investigation
- Unknown

The Washington State Patrol was not included in the criminal outcome analysis because the agency does not collect criminal outcome data for their civil asset forfeiture cases and so could not provide such. While the agency can access this data through the National Crime Information Center, State Patrol officials said they believe a federal restriction prevents them from releasing data from this federal database.

Type and value of property analysis

We used civil asset forfeiture data the agencies provided to determine the types of items seized and their estimated value. We categorized the description of each item as cash, vehicles, equipment, weapons and personal property. We then determined which items police agencies seized most often.

To determine the value of items seized, we relied on the property value at seizure, as reported by the police agency. These values are estimates because police agencies do not typically use professional appraisers. The values for vehicles were often missing in the data. If there was a sufficient description of the vehicle, we used the Kelley Blue Book to estimate its value. For vehicles without a sufficient description, we substituted the average value of vehicles seized (based on 108 vehicles that had reported values). Finally, we analyzed the value of items seized both individually and across all items seized by the police within a case.

To determine the amount of money obtained from the sale of property that had been forfeited, we used the net proceeds as reported by the police agency.

Interviews with police agencies' employees

We interviewed employees who handle civil asset forfeitures at the audited agencies to gain insights into the reasons for the trends we identified in the various analyses.

Objective 2: What opportunities exist to address due process concerns in the state's civil asset forfeiture program?

Literature review

We reviewed Washington civil asset forfeiture law and legal expert recommendations to identify requirements and practices to evaluate the due process agencies provide to people facing civil asset forfeitures. We also reviewed legal practices in other states to gain an understanding of key protections other states provide to property owners in civil asset forfeiture cases.

Policies and procedures review

We reviewed audited agencies' policies, procedures, flow charts and templates to better understand the guidance agencies have developed to help their employees provide due process to people facing civil asset forfeiture. Then, we compared agencies' guidance to due process requirements in state law and due process practices legal experts recommend to assess the adequacy of the guidance.

Case file review

We reviewed a small sample of civil asset forfeiture cases from the audited agencies to examine how they implemented requirements and practices related to due process. We reviewed a judgmental selection of five cases from each agency, or 40 cases total, that took place during the audit period (2020 through 2022). We included cases with a variety of characteristics such as case value, civil and criminal outcome, number of property owners and addresses, and potential non-English speakers. These 40 cases are not a representative sample, and the results cannot be projected to all cases at these agencies or to all cases statewide.

Notice readability assessment

To assess the readability of each agency's notice of seizure and intended forfeiture, we used Microsoft Word's built-in tools to score readability: the Flesch-Kincaid reading ease and grade level scores. The Flesch-Kincaid reading ease score assesses how easy a passage is to read. The Flesch-Kincaid grade-level score determines the approximate reading grade level someone would need to have to understand a passage. According to Readable, a writing resource company, to reach a general audience, a Flesch-Kincaid ease score between 60 and 70 and an eighth grade reading level is recommended.

Interviews with police agencies' employees

We interviewed employees who handle civil asset forfeitures at the audited agencies to better understand the agencies' processes for civil asset forfeiture and reasons why agencies had not implemented some practices in their entirety or consistently.

Interviews with defense attorneys

We interviewed defense attorneys who represent clients in civil asset forfeiture cases to understand what challenges property owners face in the civil asset forfeiture process and perspectives for gaps we identified in due process.

Work on internal controls

We determined that internal controls were significant to our audit objective related to opportunities to improve due process. We evaluated whether the law enforcement agencies' policies and procedures had guidance to assist employees with providing required and recommended due process to people involved in civil asset forfeiture cases. We also reviewed a total of 40 cases from across all audited agencies to evaluate whether and how the agencies had implemented due process requirements and practices.

Appendix C: State Law Concerning Civil Asset Forfeiture

RCW 69.50.505 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of cannabis for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia other than paraphernalia possessed, sold, or used solely to facilitate cannabis-related activities that are not violations of this chapter;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest

of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of cannabis shall not result in the forfeiture of real property unless the cannabis is possessed for commercial purposes that are unlawful under Washington state law, the amount possessed is five or more plants or one pound or more of cannabis, and a substantial nexus exists between the possession of cannabis and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of cannabis possessed by the offender, the sophistication of the activity or equipment used by the offender, whether the offender was licensed to produce, process, or sell cannabis, or was an employee of a licensed producer, processor, or retailer, and other evidence which demonstrates the offender's intent to engage in unlawful commercial activity;

(iv) The unlawful sale of cannabis or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of cannabis or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any commission inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu

of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A commission inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The commission inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail.

Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the commission or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

(8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9)(a) By January 31st of each year, each seizing agency shall remit to the state an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year for deposit into the behavioral health loan repayment program account created in RCW 28B.115.135 through June 30, 2027, and into the state general fund thereafter.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be remitted to the state shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the commission, the owners of which are unknown, are contraband and shall be summarily forfeited to the commission.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the commission.

(13) The failure, upon demand by a commission inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of

real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(i) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(A) Only if the funds applied under (a)(ii) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(b) For any claim filed under (a)(ii) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency. [2022 c 162 §

1; 2022 c 16 § 98; 2013 c 3 § 25 (Initiative Measure No. 502, approved November 6, 2012). Prior: 2009 c 479 § 46; 2009 c 364 § 1; 2008 c 6 § 631; 2003 c 53 § 348; 2001 c 168 § 1; 1993 c 487 § 1; 1992 c 211 § 1; prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); 1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15; prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.]

Reviser's note: This section was amended by 2022 c 16 § 98 and by 2022 c 162 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2022 c 162: "This act takes effect July 1, 2022." [2022 c 162 § 7.]

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

Effective date—2009 c 479: See note following RCW 2.56.030.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Severability—2001 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 168 § 5.]

Effective date—1990 c 213 §§ 2 and 12: See note following RCW 64.44.010.

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a

manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Severability—1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 282 § 3.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.34.130.

Severability—1983 c 2: See note following RCW 18.71.030.

Effective date—1982 c 189: See note following RCW 34.12.020.

Effective date—1982 c 171: See RCW 69.52.901.

Severability—1981 c 48: See note following RCW 69.50.102.

Appendix D: Civil Asset Forfeiture Standards of Proof

This appendix lists the standards of proof required to conduct civil asset forfeitures in all 50 states and Washington, D.C. Note that the federal government applies the "preponderance of the evidence" standard to its cases.

Standard of proof	States using this standard
Criminal forfeiture	Nebraska, New Mexico, North Carolina
Strong conviction provision • Applies even if owner does not contest; no waivers permitted • Requires conviction of owner • Has no property-based limits • Standard to connect property to crimes varies	Missouri, Montana
Moderate conviction provision • Applies even if owner does not contest • Does not require conviction of owner, just any person • May have property-based limits • Standard to connect property to crime may vary	Connecticut
Beyond a reasonable doubt or weak conviction provision • Applies only if owner contests, or permits non-owners to waive • Does not require conviction of owner, just any person • May have property-based limits • Standard to connect property to crime varies	Arkansas, California, Florida*, Iowa, Michigan, Minnesota, New Hampshire, New Jersey, North Dakota, Oregon, Vermont, Virginia, Wisconsin
Clear and convincing evidence	Arizona, Colorado, Maryland†, Nevada, New York†, Ohio, Pennsylvania, Utah, Wyoming
Clear and convincing evidence/Preponderance of the evidence	Washington, D.C.†
Clear and convincing evidence/Probable cause	Kentucky
Preponderance of the evidence	Alabama, Alaska, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Mississippi, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, **Washington**, West Virginia
Probable cause	Massachusetts

Notes: * Florida does not have a conviction provision; its standard is beyond a reasonable doubt.
† Washington, D.C., and Maryland have weak conviction provisions that apply to only a single type of property. New York has a weak conviction provision that applies only to non-drug cases.

Source: Institute for Justice.

Appendix E: Institute for Justice's Seizure and Forfeiture Reporting Act Model Legislation

Seizure and Forfeiture Reporting Act

Model Legislation

March 13, 2022

1. Purpose. Under state and federal forfeiture laws, state law enforcement agencies can seize money, vehicles and other property. Prosecutors then litigate the forfeiture of those assets. If successful, prosecutors then have the assets sold. In most states, the proceeds may be used to supplement the budgets of law enforcement agencies and prosecutors' offices. It is the responsibility of state legislators to monitor seizures and forfeitures. This bill provides legislators with the information necessary for oversight of seizures and forfeitures under state and federal laws.

2. Definition of law enforcement agency. "Law enforcement agency" means any police force, multijurisdictional task force, prosecuting authority, fire department, or other municipal, county or state agency that (a) has authority under state law or (b) collaborates with a federal agency under federal law to seize or forfeit property.

3. This chapter is applicable to property seized and forfeited under the following sections in the state criminal code:

(1) Section _____

(2) Section _____

(3) Section _____

(4) Any other section in the state criminal code that authorizes a law enforcement agency to seize property that is used in the commission of a criminal offense.

4. The Centralized Reporting Authority[1] shall establish and maintain a case tracking system and searchable public website that includes the following information about property seized and forfeited under state law and under any agreement with the federal government. It shall assign the responsibility to report each element to relevant agencies. If forfeiture is sought under federal law, answers to questions 12-26 may not be available readily and may be skipped.

(1) Name of the law enforcement agency that seized the property or the name of the lead agency, if the property is seized by a multijurisdictional task force;

(2) Date of the seizure;

[1] The authority selected to compile data and issue reports may vary by state. Authorities currently responsible for reports include the Arizona Criminal Justice Commission, the Governor's Office of Crime Prevention, Youth and Victim Services in Maryland, the Minnesota Office of the State Auditor and the Utah Commission on Criminal and Juvenile Justice.

(3) Type of property seized. Currency or, if property other than currency, a description of property seized including make, model, and year. Reporting is not required seized contraband including alcohol, drug paraphernalia, and controlled substances;

(4) Place of seizure: home, business or traffic stop

(5) If a traffic stop on an interstate or state highway, the direction of the traffic flow: eastbound, westbound, southbound or northbound;

(6) Estimated value of the seizure;

(7) Criminal offense alleged that led to the seizure (include whether under state or federal law);

(8) Crime for which suspect was charged (include whether under state or federal law);

(9) Criminal case number and court in which the case was filed;

(10) The outcome of suspect's criminal case: no charge was filed, charges dropped, acquittal, plea agreement, jury conviction or other;

(11) Whether forfeiture is sought under federal law: (yes or no),

(12) If forfeiture is sought under federal law, did a joint state-federal task force make the seizure of property? (yes or no);

(13) If forfeiture is sought under federal law, did a federal government adopt the seizure that a state or municipal agency made without a federal agency's involvement in the seizure? (yes or no);

(14) Forfeiture case number and court in which the case was filed;

(15) If a property owner filed a claim or counterclaim, who by: the suspect, innocent owner, creditor, or other owner;

(16) Type of forfeiture process: civil-administrative, civil-judicial or criminal;

(17) Whether the property owner defaulted in the forfeiture litigation: (yes or no);

(18) Whether there was a forfeiture settlement agreement: (yes or no);

(19) Date of forfeiture order;

(20) Property disposition: returned to owner, partially returned to owner, sold, destroyed, retained by a law enforcement agency, or pending disposition;

(21) Date of property disposition;

(22) Total value of property forfeited under state law including currency, proceeds from sale of non-currency property and distributions received from the federal government (excluding the value of contraband);

(23) Market value of property forfeited under state law that was retained, destroyed or donated (excluding the value of contraband).

(24) Estimate of total costs to the agency (a) to store property in impound lots or evidence rooms, (b) to pay for law enforcement personnel and prosecutors' time and expenses to litigate forfeiture cases and (c) cost to sell or dispose of forfeited property;

(25) Amount of the attorney fees awarded to property owners; and

(26) If any property was retained by a law enforcement agency, the purpose for which it is used.

5. The Centralized Reporting Authority shall also establish and maintain a searchable public website that includes:

(a) The total amount of funds expended, in each of the following ten categories, which resulted from property seized, forfeited and reported in paragraph 4:

(1) Drug abuse, crime and gang prevention and other community programs;

(2) Victim reparations;

(3) Investigation costs, including controlled buys, forensics, informant fees and witness protection;

(4) Expenses related to seized property including storage, maintenance, repairs and return of seized property;

(5) Expenses related to forfeiture litigation including court fees and expenses related to auditing, discovery, court reporters, printing, postage, filing, witness, outside counsel, and attorneys fee awarded to opposing counsel;

(6) Government personnel costs, including salaries, overtime and benefits, as permitted by law;

(7) Government travel and training including conferences, continuing education, entertainment, and meals;

(8) Government administrative and operating expenses including office supplies, postage, printing, utilities and repairs and maintenance of vehicles and other equipment; and

(9) Government capital expenditures including appliances, canines, computers, equipment, firearms, furniture and vehicles; and

(10) An itemized list of other expenditures of forfeiture proceeds, including payments to trade associations and lobbyists, and transfer to other agencies.

(b) The total value of seized and forfeited property held by the agency at the end of the reporting period.

6. The Central Reporting Agency shall not require or disclose (a) the names, addresses, contact information, or other personally identifying information of owners, other persons, or business entities or (b)the street addresses, vehicle identification number or serial number of any conveyance.

7. A law enforcement agency may delay the reporting of a particular asset if the asset was seized from a confidential informant under the agency's confidential informant policy. The delay may continue for as long as the confidential informant cooperates with the agency, after which the agency shall report the asset as required by paragraph 4.

8. The law enforcement agency that seizes property and prosecutors that litigate related criminal cases and forfeiture proceedings shall update the Centralized Reporting Authority's website with the information required under paragraph 4 per a schedule that the Centralized Reporting Authority establishes. The commander of a multijurisdictional task force may appoint one agency to report its seizures. If an agency has made no seizures during the previous year, a null report shall be filed by the agency specifying that it did not engage in seizures or forfeitures under this title during the reporting period.

9. The law enforcement agency that expends forfeiture-related proceeds shall update the Centralized Reporting Authority's website with the information required under paragraph 5 within 30 days after the end of the fiscal year. The commander of a multijurisdictional task force may appoint one agency to report its expenditures.

10. The Centralized Reporting Authority, 120 days after the close of the fiscal year, shall submit to the Speaker of the House of Representatives, President of the Senate, Attorney General and Governor a written report summarizing activity in the state, for the preceding fiscal year, the type, approximate value, and disposition of the property seized and the amount of any proceeds received or expended at the state and local levels. The report shall provide a categorized accounting of all proceeds expended. Summary data on seizures, forfeitures and expenditures of forfeiture proceeds shall be disaggregated by agency. The aggregate report shall also be made available on the Centralized Reporting Authority's website.

11. Centralized Reporting Authority may include in its aggregate report required by paragraph 8 recommendations to improve statutes, rules and policies to better ensure that seizure, forfeiture and expenditures are done and reported in a manner that is fair to crime victims, innocent property owners, secured interest holders, citizens, law enforcement and taxpayers.

12. If a law enforcement agency fails to file a report within 30 days after it is due and there is no good cause as determined by the Centralized Reporting Authority, the agency or department shall be subject

to a civil fine payable to the General Revenue Fund

[EITHER]

[of $500 or the equivalent of one-quarter of the forfeiture proceeds received by the agency, whichever is greater] or

[as the Centralized Reporting Authority establishes].

13. The Centralized Reporting Authority shall make no disbursement of forfeiture proceeds to an agency or department unless the agency or department meets its reporting obligation.

14. At the request of an elected official, the State Auditor shall perform annually a financial audit under the generally accepted government auditing standards (GAGAS) of records submitted to the Centralized Reporting Authority related to inventory of seized property and expenditures of forfeiture proceeds. A copy of the final audit report shall be submitted to the Centralized Reporting Authority no later than 90 days after the end of the fiscal year and shall be made public.

15. The Centralized Reporting Authority may recoup its costs under this chapter by charging a fee to the law enforcement agency filing a report. The agency may use forfeiture proceeds to pay the costs of compiling and reporting data under this chapter, and to pay any fees imposed by the Centralized Reporting Authority.

16. The Centralized Reporting Authority may adopt rules necessary to implement this chapter.

17. The data and reports compiled and prepared under this chapter are public information under the state's Open Records Act/Freedom of Information Act section _____. They are not exempted from disclosure by section_____.

18. This chapter is effective for the reporting period starting January 1, 202_.

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