

1 Melissa Wojnaroski: And please go ahead, Madam Chair.

2 Chantel Mullen: Thank you. Good afternoon. This meeting of the Georgia Advisory
3 Committee to the United States Commission on Civil Rights shall come to
4 order. For the benefit of those in the audience, I shall introduce my
5 colleagues and myself. My name is Chantel Mullen, and I serve as the
6 chair of the Georgia Advisory Committee and members of the Committee
7 on this call are Dr. Emiko Soltis, Dr. DeAndre Pickett, Vice Chair, Jerry
8 Gonzalez, Immediate Past Chair, Richard Lorenc, James Hunt, and Brian
9 Ramos. Also present are Melissa Wojnaroski, Civil Rights Analyst and
10 Liliana Schiller, Support Specialist. The United States Commission on
11 Civil Rights is an independent, bipartisan agency of the federal
12 government, charged with studying discrimination or denial of equal
13 protection under the laws because of race, color, religion, sex, age,
14 disability, national origin, or in the administration of justice.

15 In each of the 50 states and the District of Columbia, an Advisory
16 Committee to the Commission has been established and they are made up
17 of responsible persons who serve without compensation to advise the
18 Commission on relevant information concerning their respective state.
19 Today, our purpose is to hear testimony regarding civil asset forfeiture and
20 its impact on communities of color in Georgia. If speakers veer away from
21 the civil rights questions at hand to discuss possibly important, but
22 unrelated topics, I will interrupt and ask them to refrain from doing so.

23 At the outset, I want to remind everyone that this meeting is being
24 recorded and will be transcribed for the public record. I also wish to
25 remind everyone that today's meeting is the fourth in a series of meetings
26 the committee will hold on this topic. Future meetings will be announced
27 as they are scheduled over the next several months. I would also like to
28 present the ground rules for today's meeting. This is a public meeting open
29 to the media and the general public. We have a full schedule of people
30 who will be making presentations within the limited time available. The
31 time allotted for each presentation must be strictly adhered to. This will
32 include a presentation by each panelist of approximately 12 to 14 minutes.

33 After all of the panelists have concluded their statement, the committee
34 members will engage them in questions and answers. To accommodate
35 persons who are not on the agenda, but wish to make statements, we have
36 scheduled one open session today at 3:15 PM. At the appropriate time
37 when indicated to do so, anyone wishing to make a statement should press
38 star three on their phone or use the raise hand feature on the web browser
39 to request that their line be unmuted. In addition, written statements may
40 be submitted by email to the United States Commission on Civil Rights,
41 directed to Melissa Wojnaroski and her email address should be on the
42 screen.

1 There we go. Her contact information is shown on the screen. You can
2 also please call (202) 618-4158 for more information. Though some
3 statements made today may be controversial, we want to ensure that all
4 invited guests do not defame or degrade any person or any organization.
5 As the Chair, I reserve the privilege to cut short any statements that
6 defame, degrade, or do not pertain to the issue at hand. In order to ensure
7 that all aspects of the issues are represented, knowledgeable persons with a
8 wide variety of experience and viewpoints have been invited to share
9 information with us. Any person or any organization that feels defamed or
10 degraded by statements made in these proceedings may provide a public
11 response during the open comment period. Alternately, such persons or
12 organizations can file written statements for inclusion in the proceedings. I
13 urge all persons making presentations to be judicious in their statements.

14 The Advisory Committee appreciates the willingness of all participants to
15 share their views and experiences with this committee. Finally, the rules
16 for the Committee dialogue portion of the panel discussion are as follows,
17 the committee may ask questions of the entire panel or individual
18 members of the panel after panelists have had the opportunity to provide
19 their prepared statements. Advisory Committee members must be
20 recognized by the chair before asking any question of the participant. In
21 addition, because of the large number of members and short amount of
22 time, each committee member will be limited to one question plus a
23 follow up. When five minutes are left in the session, the chair will
24 announce that the last question may be asked. And I'd also like to
25 recognize that Committee Members, Benita Cotton, Eric Jacobson, and
26 Baker Smith have also joined us for today. At this time, I would like to
27 turn the meeting over to our first panelist. We'd like to welcome
28 Lieutenant Shannon Mckesey, special operations division, south Fulton
29 police department. Welcome Lieutenant and we thank you for coming
30 today.

31 Shannon Mckesey: Thank you so much. Thank you so much. So again, I'm Lieutenant
32 Shannon Mckesey, I work for city of South Fulton police department. I'm
33 the unit commander over special operations. I supervise the narcotics,
34 gangs, and asset forfeiture unit. So first, I want to just clarify what us and
35 South Fulton feel that asset forfeiture is. We take this from the Georgia
36 state law. It's a form of confiscation of assets by the pursuant to the law. It
37 typically applies to alleged proceeds or instrumentalities of crime. Some
38 jurisdictions specifically use the word confiscation instead of forfeiture.
39 Why do we forfeit? First, there's 37 state OCGA codes that we can
40 actually forfeit on, from gang activity, narcotics, fraud, theft, identity
41 crimes, the R.I.C.O Act, DUI, auto theft crimes that we here at South
42 Fulton will forfeit under. We see that it's a great benefit for us because
43 first, it dismantles our criminal enterprises down here and it actually puts a

1 dent in the pockets of our repeat offenders down here and it shows a big
2 decrease in crimes in our jurisdiction.

3 Sorry, I'm a little bit nervous, but our process down here, as far as on
4 patrol, it starts with any type of investigation from my CID that does our
5 investigations between murders, robberies, sex crimes, anything like that
6 to a simple traffic stop, right? So, if the guidelines under these particular
7 crimes meet state laws, we will go forward to forfeit on and basically, the
8 first things that we look at is the severity of the crime, if currency or
9 property was used or obtained to... I'm sorry, if the property or anything
10 they have actually obtained, was it obtained in illegal activity, okay? We
11 also look at the criminal history. If a repeat offender, if they are a repeat
12 offender from narcotics to shoplifting, to criminal gang activity, going out
13 robbing and using these proceeds to benefit their gang or if whatever
14 they're doing comes from the illegal activities that that occurs, right?

15 And also, we go by investigating. If they have a property or money and
16 they're not working, we reach out to resources like department of revenue,
17 right? And when these people are arrested, we explain these things to
18 them. At this point in time, we're going to go ahead and confiscate this
19 property and you will have a later court date. We also explain to them,
20 your criminal process is completely different than the civil process of asset
21 forfeiture, right? So, you may beat this case, but you still have to go to
22 court to state your case to the judge explaining how were you able to
23 obtain what you have or what was confiscated at the time of the crime,
24 right? And ultimately, the courts make the final decision. We've had many
25 cases where we have forfeited on property and the court saw fit to return
26 the property to the person involved in the particular incident.

27 And with the cases that we put together, we've actually been very
28 successful in forfeiting. Nowadays, what we're seeing is that the people
29 that we arrest, especially when it comes to the gang activity that we have,
30 we know that's a big issue here in Georgia, going to jail is a notch for
31 them. It doesn't bother them to go to jail. It actually increases their
32 popularity or their bar in the criminal organization that they're committing.
33 But when we go by investigating property that they're arrested with, what
34 we see, it actually puts a bigger dent in the problem that we're having,
35 right?

36 So, they're not arguing about going to jail. They are arguing about us
37 taking their stuff. And when we are able to do so, we feel like it's a win for
38 us because the simple fact, we feel like we're decreasing what they were
39 out here presenting to the community. With the state law here, we know
40 it's a minimum of \$500. Again, we do look at the criminal history. We
41 utilize, like I said, our resources, whether it is a canine unit or a search
42 warrant, we do proceed to send these cases over within 30 days of the

1 initial arrest date. And again, with a criminal history, they don't have to be
2 convicted of any particular crimes, but if the case is put together with
3 investigations and we're getting enough information to prove that these
4 funds or the property that they are having is obtained illegally, we will see
5 fit to forfeit on.

6 Even with vehicles, criminal act has to be made. If we actually visually
7 see them selling drugs from a vehicle that they own, right? We do
8 document. We do make sure our reports are very detailed to say from this
9 date to this date, we either have video, audio, pictures, whatever to prove
10 that they're using these vehicles to drive around from our jurisdiction to
11 other jurisdictions committing these illegal acts. Again, we do look at
12 criminal histories. We do detail the packaging inside the car. We do make
13 sure that our officers are taking pictures where it could be a stolen TV.
14 They just burglarized a home or what we have down here is a lot of chop
15 shops. We have vehicles that have a lot of stolen goods in them, and we
16 make sure we take pictures to show that this person is utilizing this
17 particular vehicle to do certain things.

18 When it comes to the forfeiture of houses or any type of commercial
19 businesses, we do reach out to the owners. We do present them with a
20 cease and desist. A lot of times, once that is presented, especially with
21 commercial businesses or just businesses period, they will reach out and
22 say, "Hey, what's some of the ways we can keep this from happening?"
23 We go through the proper protocols, steps, and stuff like that. "Hey,
24 increase your security, place no loitering signs, but you have to be willing
25 to help us help you." People want to be able to go to different businesses
26 and do what they need to do and not worry about criminal activity going
27 around. So, that's a lot of things we look at when it comes to apartments
28 and stuff like that or even homes that's being rented, we have no issues
29 when we reach out to the owners and say, "Hey, listen, we just executed a
30 search warrant here. The tenants had this going on here. We can't have this
31 over here." And a lot of times, they will go ahead and start the eviction
32 processes, which helps out a lot.

33 We have rarely had issues down here in South Fulton where the owner
34 was a part of the problem in the businesses. It may have been like a
35 sibling, a cousin or something down the road, we do take that into
36 consideration, right? We just don't go and say, "Hey, this is your business.
37 You're doing this. You're responsible." Which they are responsible for
38 making sure that their businesses ran correctly, right? But on the same
39 time, what we see a lot of elderly people leaving their businesses to the
40 nephews, the cousins, or leaving paid off homes to the sons and stuff like
41 that. With a lot of our gang problem, that's the biggest occurrence. And so,
42 when we have issues like that, we actually go forward to say, "Hey, listen.

1 We got to do... these are the steps. Here's your cease and desist. We got to
2 do something about it."

3 And then, we take the proper protocol steps to either help or just let the
4 judicial system proceed further with that. Again, [inaudible 00:15:11] but
5 we strictly, strictly, strictly, abide by the laws. The fourth amendment, all
6 the key elements have to be there, especially when the forfeiture cases
7 come to us when we look at these reports and stuff to make sure they were
8 in legal right of being there, number one. Number two, make sure that it
9 was an inventory search or if ad search warrant was presented or you have
10 probable cause to actually do what you did, right? Because if we don't
11 have that, we don't have a case and it's not, we're out there looking to say,
12 " Hey, let's just go out here and we see a nice car, let's pull them over."
13 That's not how that goes. But we abide by all laws down here.

14 I guess I'm more so talking about narcotics because it's either narcotics or
15 gang issues that we have, but with Fulton County, we do know it has to be
16 28 grams or more, or the way it's packaged. And a lot of times, if it's
17 written up that we've arrested this person time and time and time again for
18 the same thing and we've gathered our information or through the
19 investigation that this person has never had a job or this person has a job,
20 but they're using their job to contribute to illegal activity. All that takes a
21 factor, right? So, every case that we get that has criminal elements to it, do
22 we always forfeit? No, we don't. We look at each factor in each case and
23 say, "Okay, he's a college kid. Sometimes, things happen." But if it
24 happens again, we will go forward because of the simple fact, we educated
25 you on, "Hey, in state of Georgia, we are allowed to forfeit on ABCD.

26 Now, once that happens and [inaudible 00:17:02] continue the cycle, that
27 we continue seeing the same person of interest or the same person being
28 arrested for the same thing, then we take those steps forward, because
29 again... we know that just because you have \$100,000 on you, anybody
30 can drive around with \$100,000, don't make you a criminal. We know
31 that, but if there are elements to a crime associated with that, yes, we will
32 move forward to an investigation and then proceed the way we need to
33 proceed. But again, no convictions need to be had when we make these
34 cases, but we do look at the previous arrest. If it's a previous arrest of the
35 same thing, we take that into effect too. So, that's our process down here. I
36 apologize, I'm a little nervous, but yeah. So, I think that's the end of my
37 presentation. Yes. Questions? That's it.

38 Chantel Mullen: We're going to hold questions until after all of our panelists have finished
39 giving their statements today, but we thank you. You did fine. So, we will
40 move on to our next panelist, who is Mr. Gary D Bergman, state
41 prosecutor, prosecuting attorney's office of Georgia. Mr. Bergman,
42 welcome and the floor is yours.

1 Gary Bergman: Thank you. Ah, there it is. So, some brief statements about me. I've been a
2 prosecutor for 34 years. For the last 30, I've been involved with asset
3 forfeiture. I've been teaching it for almost 30 years. In 2011, I was asked
4 by the legislature to come down and be a part of a study committee, which
5 was looking to uniform the civil forfeiture statutes in the states. At the
6 time, there was about 34 of them and to engage in civil asset forfeiture
7 reform. So, next. So, over the course of the next four years, we created the
8 Georgia Uniform Civil Forfeiture Procedure act. What we did was we
9 standardized the procedure for all forfeiture statutes.

10 For example, R.I.C.O had its own forfeiture procedure. Gambling cases
11 had their own procedure. Drug forfeitures, which from my experience
12 from teaching it, is about at least 95% of all forfeitures in the state. And
13 what we did was because the drug forfeitures and most of these forfeitures
14 were in criminal statutes, we moved it, and when I say we, the legislature,
15 moved it from the criminal statutes over into a new chapter in title nine,
16 which is the civil practice act, to emphasize that forfeitures are in fact,
17 civil forfeitures. They're civil proceedings. Next.

18 So, the two things that I got out of the statutory scheme was that the
19 legislature wanted to provide greater access to courts for claimants, okay?
20 They wanted to eliminate what one legislator referred to as the gotcha,
21 where a person thought they filed a claim, next thing they know, their
22 property is forfeited, and they never got their day in court. And the other
23 thing they wanted do was they wanted to provide greater transparency in
24 the use of forfeited assets. People always think that they see the feds and
25 they see all the millions of dollars and the boats and the mansions, and
26 they take all these things, and they think that the state's doing the same
27 thing. I can tell you my experience is that they're not, but they still want to
28 know what are you doing with all these assets that you are forfeiting. So,
29 we wanted to address that issue too. Next.

30 So, this new statutory scheme took effect. We worked on it from 2011 to
31 2015 when it was passed. It took effect on July 1 of 2015. By now, almost
32 every single forfeiture case should be under this new statutory scheme.
33 However, there may be a few outliers out there and if they are, they will
34 use the statutory scheme that was in place when the property was first
35 seized. Next.

36 All right. So, there's basically four theories of a forfeiture. The first is
37 facilitation. Any property that was directly or indirectly used or intended
38 for use to facilitate a violation of the law, we'll use for this case, the
39 controlled substance act, okay, is subject to forfeiture. Proceeds is directly
40 related to that. It's any property directly or indirectly used or intended for
41 use to facilitate a violation of the controlled substances act or is the
42 proceeds of that, is subject to forfeiture.

1 Then, the statute allows something called close proximity and that's
2 basically, if you see drugs on a table and if you see a pile of money sitting
3 next to those drugs, you don't have to prove that those are proceeds. The
4 law presumes that because the money is sitting right next to the drugs, it's
5 subject to forfeiture. So, that's the idea behind close proximity. And then
6 the other one is weapons. Any weapon that is used, intended for use or is
7 available for use is subject to forfeiture. And the reason for that is because,
8 and I don't think I have to tell you this, is that our courts have said that
9 weapons are a tool of the drug trade and in my experiences, they most
10 certainly are. In any case that I was involved, there's always a weapon or
11 two that is seized along with the drugs and then the other property. Next.

12 So, anytime you're going to seize property, okay, under one of those four
13 theories, okay? And you have to have one of those theories to seize it, it's
14 going to require probable cause on the part of the law enforcement officer,
15 okay? Now, probable cause, it can be that the law enforcement officer sees
16 that and makes a determination at the scene without a warrant or in some
17 cases, where they know they've already got property and those types of
18 things, they can go out and get what we call a seizure warrant, okay? Once
19 it's seized, it also requires notice to registered owners and that should be
20 registered owners of vehicles. So, the old law had a rule that if the
21 property, the vehicle was rented, we had to notify the rental company
22 immediately and what the legislature said was, "Why can't we do this for
23 all registered owners of vehicles?"

24 So now, the law says if a vehicle is seized, the law enforcement officer has
25 to make a reasonable effort to determine who the registered owner is and
26 to notify that registered person, owner, that their car has been seized. Next.
27 All right. So... oh, no, back. No, forward. Okay, well, I guess we've... you
28 might have let it gone up [inaudible 00:25:12]. Okay, so time
29 requirements. 30 days from the date of the seizure, okay? The law
30 enforcement officers have to notify the district attorney's office where the
31 seizure occurred, in writing, okay, of the seizure and what they want
32 seized and they generally have to say the reason why they want it seized.
33 And then, 60 days from seizure, the state has to initiate some type of
34 forfeiture proceedings. Now, the question that you might be asking is
35 why? Well, most of these cases require a seizure right on the street or
36 something along those lines without a pre-seizure hearing. In order to
37 comport with due process, you have to give the person whose property
38 was seized...

39 PART 1 OF 4 ENDS [00:26:04]

40 The person whose property was seized... A relatively quick hearing on
41 this. Otherwise, it doesn't comport with due process. Okay, so you see 30
42 days from seizure, 60 days from seizure. Next. All right, so there are three

1 types of forfeiture proceedings. One is the quasi-judicial forfeiture
2 proceeding. The other one is an in-rem forfeiture proceeding. And the
3 third is the in-personam. And I'm going to talk about the first two, not
4 really the third. The third is where you sue the individual. The in rem is
5 where you treat the property as the defendants, and you seek forfeiture of
6 those defendants. Next.

7 Ah, there we go. So, forfeiture proceedings are special statutory
8 proceedings. They are civil, but they're still special statutory proceedings.
9 And under the Civil Practice Act, there's a statute called 9-11-81. And it
10 basically says that the rules of civil procedure apply except where they
11 come into conflict with a special statutory proceeding. So, for example, in
12 a regular civil case, normally plaintiff sues defendant, they engage in
13 discovery for anywhere from six months to two years. And finally, the
14 case goes to trial. Our statute, the statutory scheme, doesn't allow for
15 discovery. And the reason for that is, again, because we want to move this
16 case through the court system to get a resolution to see that property is
17 either subject to forfeiture or it's not subject to forfeiture, and it returns to
18 the claimant, whoever that is. Next.

19 All right, so quasi-judicial forfeiture proceedings. Sometimes... And the
20 old law we used to call it nonjudicial. The feds, I think sometimes, call it
21 administrative. Basically, if the property has a value of \$25,000 or less,
22 without filing a complaint, you can send a notice of seizure to any owner,
23 or interest holder, or any person who is in possession of the property at the
24 time of the seizure. Okay, and you also would serve the notice on these
25 people and then you would post it in the courthouse. There used to be a
26 rule that it had to be published in the newspaper, but we don't require that
27 anymore. And then the state just waits for claims. Now under the old
28 statutory scheme, this was the gotcha part. The claim had to be very
29 specific, and if it didn't have everything that was required by law, the state
30 could go and say, "We got a claim, it didn't have everything in it, we're
31 entitled to a judgment." That was what the legislature referred to as a
32 gotcha. So now, under this new statutory scheme, if a claim is filed, if a
33 person just writes on a piece of paper, "I want my property back." That's
34 all they say, nothing else. The state has to file a complaint forfeiture. Next.

35 All right. So, you can either, if the property is over \$25,000, or is real
36 property, or the state just wants to, it can file a complaint for forfeiture.
37 And generally, it's an in rem proceeding. For example, state of Georgia
38 versus a one 2018 Honda Accord VIN whatsoever, \$2,564 and 18 cents in
39 U.S. currency and one Smith & Wesson pistol. Okay, and you would have
40 three defendants, basically, the vehicle, the cash, and the weapon. Okay,
41 again, only owners and interests' holders can file an answer as opposed to
42 a claim, can file an answer to the complaint. Okay, there are certain
43 requirements for what has to be in an answer. The term owner and interest

1 holder has been construed to be very broad. There's no discovery unless a
2 party seeks permission from the court to engage in discovery. And then,
3 the court can basically control the extent of discovery and the timing of
4 discovery.

5 And then again, where you might serve this complaint within a day or two
6 of filing it, the trial has to be held 60 days from service at a complaint. So,
7 you can see that the way the statutory scheme is set up, if seized 30 days
8 later, the state is notified by law enforcement. 30 days after that, the state
9 has to initiate some type of forfeiture proceeding. If it's a complaint and
10 they serve it right away, you can be going to trial on a case like this within
11 120 days from seizure to trial, very unusual in an any type of civil case,
12 but that was the whole intent of the statute. Next.

13 All right, the hearings are held under this particular statute. They are all
14 bench trials and civil forfeiture cases. And because it is a civil case, the
15 burden of proof is preponderance of the evidence. So, the state goes first
16 and has the burden of proving that whatever they're seeking to forfeit, they
17 can prove by a provider is subject to forfeiture. In other words, they can
18 prove one of those four, facilitation, proceeds, weapon, close proximity,
19 one of those. If they do so, then the burden shifts to the claimant to prove
20 that they are an innocent owner, which I will talk about in a couple of
21 seconds. Now that's all well and good. And if it's the defendant that's
22 claiming the property, it's hard for that defendant to claim that they're an
23 innocent owner when they're driving around in a car with 10 pounds of
24 marijuana in it, and they've got \$20,000 of cash in the trunk with the
25 marijuana. Hard to do.

26 But when it's somebody other than the defendant, who would be the
27 defendant in the criminal case? Basically, if they come in and they say, "I
28 didn't know about it, and I could not reasonably have known about it." The
29 burden pretty much shifts back to the state to bring forth evidence to say
30 that, "Oh yeah, you did." So, next. All right, so innocent ownership.
31 There's subjective and objective components. The subjective component
32 is, "I did not know personally of the conduct or that it was likely to occur.
33 I am... I didn't know, I'm shocked, I'm appalled. Okay, and I want my
34 property back." The objective version is not just that the person did not
35 personally know, but that a reasonable person in the shoes of the claimant
36 would have and should have known of the conduct or that it was likely to
37 occur.

38 So, you can't basically stick your head in the sand and say, "I don't want to
39 hear what you're doing with my car. Even though it comes back every
40 time you borrow it, and it smells of marijuana, and suddenly you have a
41 lot of cash, whereas you're always broke", those types of things. Now,
42 there is a vehicle exception in an innocent owner, which means that if you

1 share a vehicle with another person, even if you may be the title owner
2 and your spouse is doing all the drug dealing out of the car, you can't
3 claim innocent ownership because the law just presumes that you know
4 what's going on with the car you share with the other person. Okay, next
5 slide.

6 Okay, so this was talked about briefly. The Fourth Amendment, search
7 and seizure, does apply if you violate a person's Fourth Amendment rights.
8 The property, including the property that was seized for forfeiture, may be
9 suppressed and you just wouldn't have that as evidence. The Fifth
10 Amendment, right against self-incrimination, that does apply. However,
11 because this is a civil proceeding, again, it's just like any other civil
12 proceeding. If a person wants to take the Fifth Amendment, the court can
13 basically hold that against them by saying, "I believe that if you had
14 answered that question, truthfully, you would have incriminated yourself."
15 The court doesn't have to, but it can. The Sixth Amendment, right to
16 counsel, does not apply, again, civil case. Okay, the Eighth Amendment,
17 which is not excessive punishment, it is the other side, the civil remedy,
18 which is excessive fines, that does apply.

19 So, if you are seeking to forfeit a \$100,000 car, let's say, for the sale of
20 say, four ounces of marijuana, chances are that's going to be an Eighth
21 Amendment violation. Okay, and there's a test for that, which when I teach
22 it, I'll go over. Next slide, please. All right, so at this point, now I want to
23 talk about what happens to the property after it's forfeited. Okay, what
24 does the state do with it? So forfeited assets, again, other than currency are
25 disposed of one of three ways, the first is it'll be sold. You forfeit a car.
26 The state's going to sell the car and distribute the proceeds from the sale.
27 The other is an in-kind distribution. In other words, the state's going to
28 take that car, and it's going to give it to a law enforcement agency or some
29 state agency and say, use this vehicle for an official law enforcement
30 purpose.

31 And then the third one is they're going to destroy it. And you may say,
32 "Why are you destroying this thing?" Well, some of these things are...
33 You're going to seize scales, those little electronic scales that you can buy
34 for \$20, \$30. Okay, and you're not going to put it back in the sale because
35 somebody is probably just going to use it for the same purpose. The law
36 enforcement probably doesn't want it. So, what you're going to do is you're
37 going to take a hammer and you're just going to smash it. Some law
38 enforcement agencies will destroy weapons under the theory that they
39 don't want to put them back into the stream of commerce. Not all of them,
40 but some of them. So those are the three ways you're going to do that.
41 Okay, next slide please.

1 All right. So, what you do is you take the fair market value of the in-kind
2 distribution. Okay, you take the net sales amount of anything that the state
3 required to be sold, and it's the DA that's doing this. And then you take the
4 cash, and you pull all that together, and you come up with a value. Okay,
5 and so from that value, let's say it was \$20,000. Okay, the first thing you're
6 going to do out of that \$20,000 pool is you're going to pay costs, and that's
7 going to be maybe law enforcement towed the car and had to pay a
8 hundred bucks. Okay, you have filing fees and the court system. Okay,
9 you're going to pay that. You may have had to publish that notice in the
10 newspaper; you're going to pay that. So, all these things are going to come
11 at you.

12 Chances are a lot of it's going to be a reimbursement to whatever agency
13 has already made these payments or made this thing, and that's what you're
14 going to do. Now, after that, you're going to take the next 10%, and you're
15 going to give it to the district attorney, but only if the district attorney
16 request. Some district attorneys never request. The former district attorney
17 in Gwinnett never took a penny in asset forfeiture money. Okay, and then
18 the remaining amount of money that's left is going to be divided pro rata
19 to the state, local, law enforcement agencies or whatever
20 multijurisdictional taskforce, according to the role each played. Now that
21 says a lot, but generally, there's only one law enforcement agency
22 involved, maybe there's two, and I'm not talking... By that I'm treating a
23 multijurisdictional task force as one's legal entity for distribution. Okay,
24 and they can only get up to one-third of their operating budget. So, if they
25 got a million-dollar forfeiture, let's say, and their budget is only \$400,000,
26 they're not getting that full million dollars. They're going to get one-third
27 of their budget, whatever that would be, I can't do the math, but the rest of
28 it would then go into the state fund to be used for other purposes. Next.

29 All right, so who does these orders of distribution? Well, it's submitted by
30 the state attorney, and by state attorney, it's the district attorney, or
31 because the attorney general is allowed under some statutes to file
32 forfeiture provisions. Instead of saying the district attorney or where
33 permitted the attorney general, we just used in the statutory scheme the
34 term state attorney to mean either one of them. Okay, so the state attorney
35 does the order of distribution, writes it up. He puts in a specific timeframe
36 for the transfer, so it might say within 10 days from the date of this order,
37 the seizing agency that has all the money will send the DA whatever
38 amount of money it is, will pay costs this to this party, this to this party
39 and lay it out, so that everybody knows exactly who's getting what. And
40 then, excuse me. Because we want the political subdivision that has
41 jurisdiction over the law enforcement agency to know what's going on, we
42 provide a copy of the order of distribution to that CEO, whoever that is, it
43 could be the mayor, it could be the county manager, it could be the elected
44 county official, whoever the Chairman of the Commission.

1 Okay, and also the state attorney does not do this in a vacuum. Okay. He
2 or she has to get permission, whatever he or she decides has to get the
3 court's approval. So, the court has to sign off on it and it happens to be, it's
4 not just a state court or magistrate court. It's the Superior Court of Georgia
5 has to sign off on this order. And when I teach it, I always say, "Whatever
6 you do get court approval, you may have three or four different orders, but
7 for everything that you do get court approval." Okay. Next slide please.

8 All right, so once all these things are divided, forfeited assets can be used
9 at the discretion of the chief officer of the LEA, which generally chief of
10 police, sheriff, for any official law enforcement purpose. Now that term,
11 official law enforcement purpose, is defined by the statute. And there is a
12 set of things that that is allowed to be used and things that obviously if
13 they're not in there are not allowed to be used for. So, it's not an unfettered
14 discretion. It is a discretion to use it within the confines of the law. The
15 same with the district attorneys. The district attorneys may use their
16 forfeited assets for any official prosecutorial purpose, and that again is
17 defined within the law. Now I know as to the DAs, they have established a
18 best practices guide for all district attorneys, as how best to use the money
19 and what is permissible, what is not permissible. Next.

20 Reporting requirements, so this is the transparency part that was created
21 under the new uniform's scheme. So, an annual report has to be submitted
22 by January 3rd, 31st for each of the previous calendar year. Okay, so come
23 January 31st, 2022, every agency that receives forfeited property expands
24 forfeited property, or returns forfeited property, or property that was
25 seized for forfeiture has to make a report. Okay, next. These are the
26 agencies that are... Back. So, any law enforcement agency, any
27 multijurisdictional task force, the district attorneys, any state agency
28 receiving forfeited assets, those four groups have to report. Okay, again,
29 but only if they've received assets, they've expended assets, or they've
30 returned to a claimant a property that was seized for forfeiture. Okay,
31 there's no requirement in the statute that if you don't have that, you have to
32 report. However, because we've had a lot of agencies that wants a report to
33 say, "I didn't do anything this year", and we had a lot of that in 2020, we
34 have created a means for them to file a nothing happened this year report.
35 Okay, and then all the reports, every agency that reports has to send a PDF
36 copy of it to the Carl Vinson Institute of Government over at the
37 University of Georgia. Next slide, please.

38 All right, so who's required to create this form? Well, I can remember at
39 this statute, during this legislative scheme, it went around and around, and
40 they said, "Oh, we're going to have the courts do it." And then he said,
41 "No, we're going to have POST do it, which is the police officer's training
42 and team. No, we're not going to do it. And then finally, my boss was
43 down there, and he said, "I'll tell you what, we're going to have the

1 Prosecuting Attorneys' Council create the form." And then he looked at
2 me and he said, "And by we, I mean, you, Gary, you'll be writing the
3 report." So, I created the report, and I'm happy to say or not happy to say
4 that the only way you can file is on a report that was created by me. And I
5 created the report based on what's required under the statute. However, I
6 just told our IT people, what needs to be in the report. They actually
7 created the report that you can find on our PAC website because, as I said,
8 the reason why I'm not doing clicking my own things because, again, I am
9 technologically illiterate. So, it is what it is. Next slide, please. Oh, well,
10 we're done. So, I know you'll have questions, if you do I guess you'll wait
11 to the end of all this, thank you so much.

12 Chantel Mullen: Thank you so much, Mr. Bergman. We will move on to our next panelist,
13 who is Representative Scott Turner from the Georgia General Assembly
14 House of Representatives. Welcome Representative Turner. The floor is
15 yours.

16 Scot Turner: Thank you to the Commission Committee Members and for the other
17 panelists for being here today, I am Scott Turner. I am a former state
18 legislator who just happened to make Civil Asset Forfeiture Reform, a
19 point of passion for my work in the legislature. I started working on it in
20 earnest in 2015. Actually, 2016 was the year I first introduced a piece of
21 legislation because the bill that we had, that Mr. Bergman had mentioned,
22 I found was woefully inadequate for several things that I believe violate
23 the fundamental constitutional principles of our country. And to illustrate
24 a couple of things I'd like for you in your own mind, in this moment, as I
25 say these particular sentences, I'd like for you to finish them in your own
26 mind. You have the right to remain... And if you're like me, silent
27 immediately came to mind.

28 You have the right to do... If you're like me, process automatically filled
29 that sentence. You have a right to a trial by... Jury. You're innocent until
30 proven... Guilty. The reason why you're able to fill those sentences with
31 those specific words is because that is an American Promise. That is a
32 promise that the government makes to you as an individual citizen of this
33 country that in order to take your liberty away, there are certain things the
34 government has to do. And one of those things is established that before
35 you can be punished for criminal activity, that you must be proven guilty.
36 The current Civil Asset Forfeiture scheme in Georgia does not require any
37 type of conviction or even a charge of criminal activity. We've heard some
38 testimony today where people issue... They're talking about their policy at
39 their agency level, and that's all fine and good, and I applaud that they
40 have those policies, but that's not required by law in Georgia.

41 In Georgia, you can be accused of a crime, go through your 30 to 60-day
42 trial your property again, and rim forfeiture, and you lose your property.

1 And so, what I found is that there are two groups that basically oppose any
2 type of reform when it comes to Civil Asset Forfeiture and re-establishing
3 this concept that the innocent until proven guilty. And those are the
4 Georgia Sheriffs' Association and the Prosecutor Attorneys' Council. With
5 all due respect to the people who are in those roles, I never, once in my
6 time in office, try to point the finger at them and say that they're to blame
7 for this because they are not. The Prosecuting Attorneys' Council and the
8 Georgia Sheriffs' Association are simply enforcing the law as written by
9 the legislature. Where I've directed my ire is at legislators for not picking
10 up the policy wall and running with this. But there have two really major
11 things working against them politically, in order to attack this policy issue.
12 And this is where bad policy leads to bad policy positions. Because
13 Georgia Law incentivizes the use of Civil Asset Forfeiture to add the local
14 budgets up to 100% of whatever is seized can go into a local budget. The
15 Georgia Sheriffs' Association or Prosecuting Attorneys' Council are
16 vigorously opposed to any effort to reform the law. And I know this from
17 personal and a personal experience on the 22nd of January, I remember
18 exactly where it was. I was driving home it was snowing. I was driving
19 home from the-

20 PART 2 OF 4 ENDS [00:52:04]

21 ... January. I remember exactly where it was. I was driving home, it was
22 snowing. Just driving, coming home from the Capitol, and speaking to a
23 law enforcement friend. I pulled over into the Gwinnett Place Mall's
24 parking lot, so I could talk to him and have a very serious conversation. I
25 spoke with him and my own DA in my own home county In Cherokee
26 County on that particular day. And I explained to them what I was going
27 to be doing. I was going to be introducing a piece of legislation that would
28 require a conviction prior to the civil process moving forward. Mr.
29 Bergman explained in great detail, and officer Mckesey also explained
30 how there are two separate processes here, there's a civil process and
31 there's a criminal process. The law is written so that the prosecuting
32 attorney in this particular instance can, if they choose with good cause to
33 stay the civil case pending the outcome of the criminal.

34 And what that would do is, it would allow a defendant to have their day in
35 court prior to. And I was told by my friend in law enforcement, "I support
36 you a hundred percent. However, you're going to get a vitriolic response."
37 And my own sheriff at the time, and my current sheriff wanted me to
38 make sure that you all knew that it wasn't him that wrote this. So, the
39 gentleman that I'm showing this email and the slide set, when I introduced
40 the piece of legislation, I got dozens of email, calls of support, and my
41 own sheriff says, "the Sheriff's association will crush and embarrass your
42 and Caldwell's bill, and I intend to lead the charge." Now, that sheriff is no

1 longer in office, but that gives you a sense of the type of headwinds a
2 legislator would have whenever they tackle this issue.

3 But why the vitriol? Why the emotional response to this? Well, many law
4 enforcement agencies rely on civil asset forfeiture funds to run their office.
5 Because there's no criminal charges or convictions required, they're able to
6 fast track these things and get access to those assets before a conviction, or
7 a not guilty verdict, in some cases, are obtained. Civil proceedings have a
8 lower threshold. The preponderance of the evidence is basically a 50%
9 plus one. That burden, criminal proceedings we think of as beyond a
10 reasonable doubt. A hundred percent, you definitely did it. Preponderance
11 of the evidence is 50% plus one. A case can be brought against a property
12 owner or be the property and not the owner. Civil proceedings occur in
13 advance of criminal proceedings, which is very key for the committee, I
14 want you to really focus on this.

15 Imperils your right to remain silent in your criminal proceeding. Mr.
16 Bergman just said in his testimony, how the court can say, " when you
17 evoke the right to remain silent, so that's actually a negative, and that they
18 can basically assume under these burdens what your intent was." And any
19 good defense attorney is going to tell you, "You are not going to go defend
20 your property in a civil suit until after this criminal is done. Because
21 otherwise you could potentially incriminate yourself and we need a clean
22 slate when we head into your criminal proceedings." And so, a lot of these
23 actions against property go unanswered because of how fast they to
24 happen. We talked about how local agencies keep up a hundred percent of
25 the value of the property.

26 And you can see that these policies incentivize opposition to reform.
27 Members of the Sheriff's Association have told me that this is not about
28 money. They said, "Representative Turner, this is not about money," But I
29 introduced the piece of legislation in 2019. It has to do with that federal
30 equitable sharing programs. What I noticed around the states that have
31 tackled civil asset forfeiture and trying to require a conviction prior to
32 moving to the civil process is that local law enforcement agencies would
33 just begin going to the federal government and asking for equitable
34 sharing, and the federal government would gladly engage, especially when
35 Jeff Sessions was the Attorney General. And so, they were doing an end-
36 around on state law by invoking the federal process. This happened in
37 New Mexico, New Mexico went to a criminal forfeiture model and their
38 local law enforcement did this end-around, and it's happened in other
39 states as well.

40 So, I said, "Well, look, we'll address this in Georgia as well. If the amount
41 exceeds \$100,000, then you can participate in the federal equitable sharing
42 program for our local law enforcement agencies. And the representative

1 from the Georgia Sheriff's Association looked me straight in the eye and
2 said, "But then why would I want to enforce the law? I'm not incentivized
3 anymore." Because the money mattered. The bottom line is it is about the
4 money. Now, let me just go back real quick. Why are sheriffs so hard to
5 fight in Georgia? And the answer is they outnumber their legislators, and
6 they are the most popular elected officials in each of their counties. In my
7 county, I live in Cherokee County, which is a central just north of Atlanta.
8 You will see that my particular sheriff, my new sheriff wins with hundreds
9 of thousands of votes and is the most popular man in this county.

10 One member of the legislature, when I approached them to become a
11 sponsor of my bill said, "I really love your idea. I think it's awesome, but
12 there's John Wayne, and then there's my sheriff." The most popular
13 person... You cannot make your sheriff mad in most cases. Lucky for me, I
14 represented just part of Cherokee County. There were for other members
15 of the house that represented parts of Cherokee County, so I didn't have
16 the entire county. But when you look at this map, and what I want you to
17 look is in South Georgia. Each one of these colored areas in the south part
18 of the state, are our district. On the left side is the Senate, and on the right
19 side is the House. And you can see how many different counties a
20 legislator has to represent, and there's a sheriff in each one of them. And
21 that's the most popular person in your county. And that's who you'd have
22 to go and convince that they have to give up the money to run their office.

23 So, the easiest fix is found in OCGA 9-16-15, when you might ask, why
24 was what I was proposing so incredibly groundbreaking? Why was it earth
25 shattering? Why did it cost so much controversy? And it fits completely
26 here. This is the language from the piece of legislation that I filed. And it
27 changes, in line 16 you'll see, "For good cause shown the state or owner
28 interest holder of the property of the court may stay a civil forfeiture
29 proceeding." And I change at the [inaudible 00:59:14] and in line 20,
30 "unless the owner or interest holder or the property waives, the stay."
31 Meaning that they can go forward if an innocent owner, grandma lent her
32 minivan to her drug dealer, grandson, and didn't know, she can go ahead
33 and waive the stay, she doesn't have to wait for his criminal proceedings.
34 But here's the big kicker, right?

35 Line 22. You see the word not in the middle. "An acquittal or dismissal in
36 a criminal proceeding shall not preclude civil forfeiture proceedings."
37 What this essentially... And that's what it says today. And then the word
38 "not" is struck in the proposed legislation, because if you are found not
39 guilty today in Georgia, it doesn't matter. It doesn't matter. You can be
40 found not guilty by a jury of your peers in the court of law, and the state
41 can still take your property under preponderance of the evidence in a civil
42 proceeding before you even have your day in court on the criminal. And
43 so, what this does is it re-establishes that concept of innocent until proven

1 guilty. And it says, "we will seize the property today." Under current law,
2 a police officer in South Fulton pulls over somebody and they smell
3 marijuana, and they find a pound or a kilo of some sort of banned
4 substance along with a stack of cash, and they seize that vehicle based
5 upon what they see as potential criminal activity.

6 Under this particular proposed legislation that does not change, they
7 would still do the same exact thing. They would still have the opportunity
8 to damage the criminal enterprise, but they would have to seize that
9 property and hold it until after the criminal proceeding was done. If they
10 were found guilty by a court of law that would be admissible in the civil
11 case, and it would be almost a slam dunk for them to take ownership of
12 that property. But if they're found not guilty, then they should get their
13 property back, period, end of discussion. That's the American promise,
14 that's our form of government, that's what we tell our people. That's why
15 you can finish the sentence innocent until proven guilty, without me
16 having to tell you what comes at the end of that sentence.

17 This particular committees focuses on how civil asset forfeiture reform
18 affects people of color. And I find that one of those promises that I've
19 mentioned before is equal justice under the law. And so, it really breaks
20 my heart when we have a process that can potentially be used to target
21 people of different types of backgrounds or creeds or color, or race. But
22 this has been used in Georgia to target people of color and it has been
23 documented. And all you have to do is, I'm not going to give you a ton of
24 details, but I'll give you the highlights. And you can Google Mike Scott,
25 Atlanta Hawks, Banks County, Georgia. And you'll find a couple of dozen
26 stories about how Mike Scott, who was an NBA player, he played for the
27 Atlanta Hawks for a couple of years, and he got pulled over with his
28 brother on the way to Virginia in Banks County, Georgia.

29 He was accused of following too closely behind a car, or as he was driving
30 behind a car and he was pulled over. And what was found is that this
31 particular Sheriff's office, Banks County, Georgia had no dash cams on a
32 special unit that was focused on their highway, they had no speed
33 detection devices, and yet somehow one particular officer over the course
34 of two years made 1400 stops. He gave out eight citations, he made 47
35 arrests and 44 of them were people of color, minorities. Ultimately the
36 judge in that particular case threw the case out, saying that the officer
37 clearly was not enforcing the law equally, and that the property would be
38 returned to its rightful owners. The offense was they had some marijuana,
39 they had some ecstasy and they had like \$1,600 in cash, which for an NBA
40 player isn't that much.

41 That was what was seized, the car as well. What's interesting is Mr.
42 Bergman mentioned a moment ago about how we have a requirement for

1 reporting in Georgia, civil asset forfeiture proceedings. And so, this
2 morning I went and looked at Banks County just to double-check. And in
3 2015 and 2016, they took \$285,000 in cash over two years. After this story
4 broke in 2017, they did not file a report, 2018 they did not file a report,
5 2019, they did not file a report, and in 2020 they filed a report. They had
6 \$27,000 and state level funds and \$29,000 for federal funds, which is a
7 fraction of what they were collecting when they were out there on the
8 highway, targeting people of color. So, all of that, to say that there are
9 fixes, we can end or drastically reform the federal equitable sharing
10 program that would prevent the end-around for any state level reform.

11 We can end outsourced prosecutions. I haven't really talked about this a
12 great deal, but we do have jurisdiction in Georgia. Macon-Bibb comes to
13 mind, where a special assistant district attorney will go ahead and take on
14 these cases. And in Georgia, it is illegal to prosecute on contingency.
15 However, they've found a very clever way to get around that. I think
16 basically the agreement in Macon-Bibb County was that they would
17 reimburse their expenses up to one third of the value of the property that
18 was seized. And some of those cases down there, we're talking one and a
19 half million dollars, and this incentivizes that particular special assistant
20 district attorney to get everything they possibly can, even if it's not related,
21 so that they could get as much money out of the cases as they possibly
22 can. When other fixes report, how many cases receive a conviction in the
23 related criminal case, Mr. Bergman mentioned Gwinette County.

24 We had great amount of debate and conversation, and in a very collegial
25 way with a former prosecuting attorney, a district attorney in Gwinnett
26 County, who told me that 100% of his cases had a criminal conviction.
27 And he was very proud of that, and he should be because that's the way it
28 should be. But it's not the way it's required in law, and my response to him
29 was, "Well, let's just make what your do as a policy state law, and then
30 raise the evidentiary standard to at least clear and convincing, if the
31 legislation that requires a conviction does not pass." There's a separate
32 piece of legislation for that, that I did author at the behest of the Georgia
33 House Speaker at the time, and it was on the consideration calendar, but
34 ultimately didn't get called for a vote on the floor.

35 So those are some of the fixes. But one of the things I want to reiterate,
36 and I said this once before during the course of my presentation, is that
37 this is not law enforcement's fault, and this is not... Even though the
38 Georgia Sheriff's Association comes out politically to fight it, it's not their
39 fault that this is the law. Our policy makers are the ones who have elected
40 titles, like State Representative, Senator, Lieutenant Governor, Speaker of
41 the House, Governor. These are the people who get to decide what the law
42 is. And I believe that people who put on a badge or go to work in a
43 courtroom protecting us from the criminal element can and still will be

1 able to use these tools to crack down on the criminal enterprise. And we
2 can still honor the American promise of innocent until proven guilty.
3 Thank you, that's all I have for you guys today, and I appreciate your time.
4 It's been an honor. And if you need me, there's my contact info.

5 Chantel Mullen: Thank you. I'd like to thank all of our panelists today. We will now have
6 questions from our committee members. Committee members if you have
7 a question, please use the hand raise feature, and I will recognize you. We
8 have a question from committee member, Richard Lawrence. Richard.

9 Richard Lawrenc: Thank you, Madam Chair. Thanks to all of our panelists. I will echo that
10 sentiment of gratitude. My name is Richard Lawrenc, I'm a member of the
11 Advisory Committee for Georgia. I was just now particularly impressed
12 about Mr. Turner's elucidation of the order of operations and his proposal
13 to stay the civil asset forfeiture proceedings until criminal charges are
14 fully answered. That seems quite important to the notion that we're all
15 innocent until proven guilty. But my question is actually for Mr. Bergman,
16 and I appreciate your testimony Mr. Bergman, it's really valuable to learn
17 about the process that's undertaken in cases of civil asset forfeiture, so that
18 was very good to hear.

19 We've heard from other testimonies to this committee that the median
20 forfeiture in Georgia was \$540 from 2015 to 2018. And we've also heard
21 histories of civil asset forfeiture along with perspectives that civil asset
22 forfeiture is most valuable to law enforcement when it targets criminal
23 kingpins. Now, you've informed us very valuably that 90% plus of the
24 seizures that you've observed or at least are aware of are drug-related. And
25 I'm curious if you would say in your experience that most incidents of
26 civil asset forfeiture [inaudible 01:09:26] property are that of criminal
27 kingpins or people who have major criminal enterprises.

28 Gary Bergman: So, that I cannot say, at least about as to how much the average forfeiture
29 is in the state of Georgia, nor can I say whether they target kingpins or not,
30 because I'm not involved in every single case. What I can tell you is that I
31 teach asset forfeiture. And as part of my teaching, I stress that the goal of
32 asset forfeiture is remedial, okay? To eliminate the tools of the drug trade
33 and to eliminate the profit from the drug trade, okay? And that the goal
34 also is to dismantle a criminal enterprise.

35 Now that criminal enterprise may be as big as a cartel, or it may be as
36 small as one particular person, who's just dealing drugs. Mostly when you
37 think of criminal enterprises right now, there's a lot of gang activity that
38 are criminal enterprises, there's families that are out there, that the whole
39 family's just dealing in drugs. I would consider them to be a criminal
40 enterprise. But, like I said, the way I teach it is that is the goal, okay? To

1 dismantle the criminal enterprise, take away the tools and to take away the
2 profit from the crime. I hope that answers your question.

3 Richard Lawrenc: Yeah. Thank you, Mr. Bergman. Madam Chair, may I ask a follow-up?

4 Chantel Mullen: Yes.

5 Richard Lawrenc: Yeah. Thank you, Mr. Bergman. And because you teach this, I'm curious.
6 You spoke also on theories of forfeiture, and I'm curious about facilitation
7 particularly, and how law enforcement or courts differentiate between
8 property use directly or indirectly. And I'm asking specifically, you
9 mentioned obviously the pile of cash on the table with the narcotics. That
10 makes sense to me, but I've also read in the past about motels that are
11 seized because of alleged activity, criminal activity occurring in [inaudible
12 01:11:48] suits. And I'm curious that distinction direct versus indirect use
13 of property in the commission of a crime.

14 Gary Bergman: Okay. So, there's a lot in that question. First of all, you can't seize real
15 property, not without a procedure hearing. So, the term directly and
16 indirectly basically is hard to... But I'll use the example of if I'm dealing
17 money or I'm sorry, if I'm dealing drugs out of my car, that is a direct,
18 okay? If I make a deal to make a sale of drugs, right? And I'm driving to
19 the sale, and I get pulled over, then that's sort of indirect. I never actually
20 sold it. I am transporting, but that's sort of the indirect of the sale, okay?
21 And that's the best way I can put it. I know it says directly or indirectly,
22 and it sounds very broad, but unless you have some type of direct evidence
23 that this property is being used in some manner or as the proceeds, you're
24 probably not going to get a forfeiture out of it. Does that help?

25 Richard Lawrenc: Yes. Thank you.

26 Chantel Mullen: Thank you.

27 Gary Bergman: Did I answer every part of your question? There was a lot in there. Okay.

28 Chantel Mullen: All right. Thank you. We have a question now from Dr. DeAndre Pickett.

29 DeAndre Pickett: Okay. Madam Chair. Can you hear me?

30 Chantel Mullen: Yes.

31 DeAndre Pickett: Okay. Thank you. And Madam Chair, actually, we always use Richard as
32 our measuring tool because he actually did answer one of my questions
33 and so I'm appreciative of that. So, I would just strictly go by doing a
34 simple thank you to again, Representative Turner, Mr. Bergman, and Ms.
35 Mckesey simply because of the fact that you have truly provided a ton of

1 education, particularly Representative Turner, who I have actually utilized
2 some of your bills, including HB 107 and HB 111 to kind of piece
3 together some of the questions that I've had for previous committees. And
4 then of course, Mr. Bergman, literally breaking down a vast bit of
5 information. And then of course, hearing from you Ms. Mckesey from an
6 actual law enforcement individual who is actually doing the work. And so,
7 I just wanted to simply say thank you to each one of you for providing the
8 educational piece that you have.

9 Chantel Mullen: Thank you. I don't see any other questions from a committee members. So,
10 I'm going to take Chair's privilege and ask a question. And if there are any
11 other committee members who have a question, please let me know before
12 we open up for our public portion. Mr. Bergman and Lieutenant Mckesey,
13 because Mr. Turner actually provided some solutions that he thought we
14 should consider. Starting with Mr. Bergman, are there any changes to the
15 law that you would recommend?

16 Gary Bergman: Well, those are policy decisions, and I don't get involved in policy. I think
17 that question would be better directed to the District Attorney's
18 Association and not to me personally. I teach what the law is, but as to
19 what the law should be, I leave that to others.

20 Chantel Mullen: Okay. And Lieutenant Mckesey? Just, oh.

21 Shannon Mckesey: Yes, I'm going to have to agree with him, we just abide by the laws and
22 stay within that realm.

23 Chantel Mullen: Got you. Thank you. I just wanted to give you an opportunity though.

24 Shannon Mckesey: Thank you.

25 Chantel Mullen: Thank you. Are there any other questions from our committee members?
26 If not, Melissa, are there any members of the public who are on the line?

27 Melissa Wojnaroski: I do not see any members of the public at this time, but I see a hand raised
28 from committee member Richard Lawrence.

29 Chantel Mullen: Yes. Okay. We don't have any members of the public. So, we still have a
30 few minutes that we can take committee questions at that time. So,
31 Richard.

32 Richard Lawrenc: Thank you, Madam Chair. I'm curious if anyone has information, maybe
33 Mr. Bergman, you do, since you mentioned it, how much property is
34 actually destroyed? You mentioned the scales that are destroyed, but is
35 there any number or value that you can assign to that?

1 Gary Bergman: I cannot. Again, I'm sorry. Every law enforcement agency, all those
2 agencies are required to report. And one of the things to require to report,
3 would it be if they destroy property, what did they destroy and what was
4 the value of what they destroyed? But although the reports all come
5 through the PAC, I don't actually look at any of them. My job is to create
6 the report, and then what the PAC is, is basically a conduit. So, for
7 example, law enforcement agencies, local law enforcement agencies have
8 to report to their political subdivision, okay? The state agencies have to
9 report to the state auditor. Multi-jurisdictional task forces have to report to
10 every jurisdiction that's in their report. So, if there's like 20 different
11 jurisdictions, they have to report to all 20 of those. What we have done by
12 creating our report is...

13 PART 3 OF 4 ENDS [01:18:04]

14 What we have done by creating our report is we basically say you report
15 using our form. And if you'll tell us who you want that report to be sent to
16 and whatever political subdivision you want it to. Let's say you want the
17 mayor and all the council members, okay, to receive it, you've just put
18 your email down where you want this on the form, and we will send it to
19 them. And then, every form that we get, every report that we get, we
20 forward that over to the Carl Vinson Institute and they are supposed to
21 publish this in a place where any member of the public can see it, but we
22 don't gather the information or do any reporting based on what is sent to
23 us. We are merely just moving it on, and we created the forms.

24 Now the DA's, again, are supposed to report to the PAC and to the state
25 auditor. We get all those reports. We send it all to the state auditor or to
26 whomever else. We collect all the reports from the DAs, but as I have to
27 tell a lot of members of the public who sometimes call here to complain
28 about a particular DA or something along those lines, the PAC is here to
29 serve our elected prosecutors of the state, okay? And they don't work for
30 us, we work for them. So, even though they're required to send their
31 reports to us, we don't tell them what to put in it or how we teach them,
32 but if there's something the matter with it, that's up to the state auditor to
33 tell them that. Again, does that answer your question?

34 Richard Lawrenc: It's good to hear about the process. I appreciate it.

35 Chantel Mullen: Thank you. We have a question from James Holland.

36 James Hunt: Thank you, Madam Chair. And thank you to all the panelists. I just have a
37 quick question, mainly for Mr. Bergman. It struck me when you were
38 talking about the constitutional provisions that there's no right to a jury
39 and on the more procedural side, there's no broad right to discovery, which
40 are both required essentially in most civil cases, why were those left out in

1 civil forfeiture or are you aware of a reason why the procedure is different
2 for this type of civil action, as opposed to most other civil actions in the
3 state of Georgia?

4 Gary Bergman: Well, when I got involved with asset forfeiture, the 1991 version of the
5 drug forfeiture statute had already been written and it allowed only for
6 bench trials and that was taken up to the Supreme court. Actually, it was
7 taken up... I represented the state in that case it's called Swales versus
8 states, and the court basically said that these are equity cases. And if you
9 know anything about equity cases, forfeiture is no different. And it was
10 created in equity and that's why I think, long, long time ago in a place far,
11 far away, they used Admiralty law to forfeit because they would forfeit the
12 ships that came over and had illegal goods. And so, I think the federal
13 rules are still bounded in the Admiralty statutes. I don't know that for sure.
14 I don't do federal law, but that is why and the courts, our Supreme court
15 upheld it.

16 And as for discovery, it was the chairman of our judiciary, a fellow by the
17 name of Wendell Willard who said, I don't want discovery. This defeats
18 the purpose, okay? The statute is supposed to move quickly. Now, you can
19 get a continuance on a hearing. That's supposed to be within 60 days of
20 service, you can get a continuance for good cause shown, whatever good
21 cause shown is. It can be for no longer than another 60-day period. And
22 so, if you want to keep continuing it, unless you get agreement from the
23 claimant, when a claimant gets agreement from the state, you have to get a
24 continuance with it every 60 days. Does that answer your question?

25 James Hunt: Yes. Thank you. The equity part is interesting. I was not aware of that.
26 Although, historically, forfeiture is connected to equity, right? Thank you.

27 Gary Bergman: You're welcome.

28 Chantel Mullen: Thank you. We have a question from Benita Cotton.

29 Benita Cotton: Thank you. I have a question for Mr. Turner. Thank you so much for your
30 presentation. You have been looking... and in fact, right after I raised my
31 hand, you shared the Carl Vinson website, what is your opinion on the
32 quality of the reporting from agencies and what would you say needs to be
33 done to that conduit? You're muted.

34 Scot Turner: Oh, sorry about that. Thank you for the question, Benita, it's good to see
35 you. I did post in the chat, for anybody who's on the call, a link to the Carl
36 Vinson institute database on civil asset forfeiture in Georgia and anybody
37 that takes just a few minutes to go through that is going to probably need
38 some Tylenol or some Advil within a short period of time to deal with the
39 headache. It's just not easy to use. It uses PDFs, which means it's not

1 searchable. You can't look for specific types of transactions. In order to try
2 to find a specific instance, you have to know the year it happened and
3 which jurisdiction had that particular case and hope that the local office
4 actually filed the paperwork and they're not all filing. As I mentioned,
5 Banks County by specific name.

6 On the day that my sheriff came to testify against... one of my pieces of
7 legislation was civil asset forfeiture. I pointed out to him that he had not
8 filed his own forms in two years. So, it's hit or miss. There's nobody
9 enforcing the reporting requirements. So, the data is incomplete at best
10 and missing huge gaping amounts of data for whole years for certain law
11 enforcement agencies. Banks County, if you don't know, is a county that is
12 situated between Atlanta and the South Carolina border. I-95 runs... I'm
13 sorry. 85 runs from Atlanta into Greenville, South Carolina there.

14 And so, they have a major interstate there and they are pulling people over
15 every single day in Banks County as part of their traffic enforcement.
16 Local law enforcement agencies are allowed to do that in Georgia,
17 specifically counties are. Cities have to ask permission from the legislature
18 to do it and most cities have that permission, but they're not reporting for
19 several years. And it just so happens to coincide with the instance where a
20 judge throughout a case because the judge Mingledorf in that county
21 found that the Banks County Sheriff's department had in fact use race as a
22 way of targeting people for this particular process. So, 17, 18, 19 are
23 missing and there's nobody enforcing that.

24 So, if you ask me, what are some things that can be done? Number one is
25 figure out who's responsible for enforcing that and then, put some teeth
26 around the requirement to enforce it. And then, have a techie type person
27 go in and look at a database and how can we search it to make it more
28 useful for the public to be able to use this data to hold people accountable
29 and add transparency to the process? Because when you have to look at...
30 if I go to that website and the city Adairsville is the third city there and I
31 click on city of Adairsville, and I happen to click... I think it's happened in
32 2015, but I'm not sure, then I have to go through every single transaction
33 on a PDF in order to find that one that I'm looking for and if I got the
34 wrong year, I'm in the wrong document and it's just a mess.

35 But if I could search by somebody's name or the property description or
36 any types of things that a tech person would be to very quickly say, these
37 are the things you want to be able to search for, boom, go look for it. I
38 should be able to look for my name and as the property owner, I should be
39 able to search for my name and not have to go through and select it the
40 way it is. So, it's a mess Benita, it's a mess. And that's my opinion of it, but
41 I do think it can be fixed and it starts with actually requiring or making

1 sure that the agencies that are using civil asset forfeiture are at least
2 reporting something year over year.

3 Chantel Mullen: Thank you and actually, representative Turner, you answered the question
4 that I had because I was going to ask, did anybody review the reports
5 annually or is there any penalty for not reporting and is all jurisdictions
6 who use civil asset forfeiture actually reporting?

7 Scot Turner: So, I was glad to hear Mr. Bergman say that they've created a form that
8 says that they don't have anything to report because oftentimes, a county
9 will just not report anything for that year. So, I'm going to pull up my own
10 home county and I'm going to go between 2014 and 2020, just to give it a
11 nice broad, because at one point, they had not reported for a couple of
12 years. So, I'll pull this up. And in Cherokee county, it goes 15, they have
13 three reports from 15, they skipped 16, they have two reports in 17. They
14 have two reports for 18, one for 19 and two for 20. So, just trying to figure
15 out which one where you're going is going to be hard. And so, you'll also
16 see like in 2016, they didn't report and there's nothing there.

17 So, there is no penalty for that, that I'm aware of. And nobody's actually
18 going back to look at these things unless you're like me, and this is a
19 policy area that you're certainly enthused about and you want to try to
20 figure out what's happening, but there are some other think tanks that have
21 helped us along the way. Georgia public policy foundation has been
22 helpful. The Georgia center for opportunity has been helpful in trying to
23 parse this data, but it is so... It's such a mountain of hay, that it's hard to
24 find that that needle that you're really looking for. Does that answer your
25 question?

26 Chantel Mullen: Yes, yes it does.

27 Scot Turner: Thank you.

28 Chantel Mullen: I believe Richard, do you have your hand raised again for another
29 question?

30 Richard Lawrenc: I have one quick question if it's all right.

31 Chantel Mullen: Yes. And that'll be our last question for the day.

32 Richard Lawrenc: So, this question is for Lieutenant Mckesey and I'm curious, what is your
33 sense, Lieutenant, of how often you return property that has been seized
34 after there have been no criminal charges or after there has not been a
35 conviction of criminal charges?

1 Shannon Mckesey: So, basically, a little bit of my background was I have 17 years total on
2 policing. I did 14 years in Atlanta before coming down to south Fulton.
3 And when I came down to south Fulton, they were not forfeiting at all.
4 They wasn't doing it at all. So, the crime initially was gangs and narcotics.
5 When we first got down here, I looked at the whole totality of what the
6 crime was and the first case that we forfeited on, it was a shock. It sent a
7 shockwave through the whole city down here because they wasn't used to
8 it, right?

9 Spending a couple of years in Atlanta in forfeiture, the ADA that actually
10 handled the cases there, he was very good, he was very thorough, and I
11 could tell you, it was very unlikely that we will actually return the
12 property, right? He had a very good conviction rate; the property was
13 always seized. What we're seeing now is that you can talk to any of my
14 colleagues, to talk about asset forfeiture is foreign. It's like, "Oh my God,
15 you got to have all this. It's approve this." And really, it's not. Long as
16 your case is airtight and you get the conviction, we're going to get the
17 forfeiture. The problems we're running into now is that we have some
18 attorneys that if we want to do a gang forfeiture statute or maybe a chop
19 shop forfeiture statute... I don't want to put that out there, but it may be
20 harder.

21 So, the easiest thing is to do is to return the property. If you follow what
22 I'm saying, but you know me, I don't take no very easily, especially if the
23 probable cause is there. If the totality of the circumstances of the crime is
24 there. Like, look, here are years or months or 911 calls at a particular
25 location that this person is doing ABCD, especially with the gang
26 problem. I'm actually going back and forth with the ADA now about
27 returning some gang pendants. They've actually got 100,000 dollars of
28 these gang chains that promotes the gang, which to 10, 12, 13 year old
29 kids, it's like, "Oh, wow, I want to be like them." And I'm like, "No, we
30 need to forfeit." It's what they're using when we arrested them. Gang,
31 drugs, money, guns, it's all a part of the crime. So, I've actually saw
32 probably 10% of the things that we've down here has been returned.
33 Basically, it's an agreement between the courts saying, "Hey, this money
34 needs to go back because he needs to pay the attorney and the rest is
35 forfeited." Which I don't know how that works, but yeah, that's the thing
36 down here now. So...

37 Richard Lawrenc: That's excellent. If I could ask a quick follow-up, Madam Chair.

38 Chantel Mullen: Yes.

39 Richard Lawrenc: And that is Lieutenant, you're saying that you take a lot of the background
40 of people who you know, people you've come across when deciding for a
41 particular case, whether to request that certain property be forfeited. It sort

1 of is your background of that specific community or individual that you're
2 taking into account.

3 Shannon Mckesey: Correct. I mean, like I said, I've had college students, innocent traffic stop,
4 and they've had a couple of blunts inside their car and they just got paid,
5 the check stub says \$500, but they have \$10,000 in the car. So, our job as
6 law enforcement is to investigate. Does everybody need to go to jail? No.
7 Does everybody's property need to be forfeited. No, absolutely not. So, I
8 have a great team of investigators that will actually sit these individuals
9 down and let them, if they're waiving their rights to speak without counsel,
10 they will actually say, "Hey, this is what's going on. This is what I did.
11 Blah, blah, blah." And the decisions made right then and there. Now, if
12 certain things are questionable, yes. We will take the necessary steps to
13 actually find out. Like I said, department of revenue, "Hey, let's see the
14 background of their address where they stay at. Have they had any
15 shootings?" And sometimes, the house have had the shootings at the house
16 and then that leads us into, "Okay, what are they involved in?" Okay? And
17 then, that's literally how we make decisions down here. It's not like we just
18 target certain communities or certain people, it's just what we come across.

19 Richard Lawrenc: Thank you.

20 Chantel Mullen: Thank you. Dr. Soltis, if your question is really quick, I think we can work
21 it in for just before we close.

22 Laura Soltis: Thank you. At the very least, if people aren't able to answer, I would like
23 the committee to consider this question for future investigation, but just in
24 sitting and listening today, like everyone said, thank you all for your
25 testimonies. Lieutenant Mckesey, I heard you talk about DUI as being one
26 of the methods in which civil asset forfeiture come about, college students
27 with blunts in the car. Mr. Bergman, you talked about 95% of forfeitures
28 in your estimation are related to drug related offenses. Representative
29 Turner, thank you for your story about Mike Scott and the officer who
30 made 1400 stops without speed detection devices, yet made 47 arrests and
31 94% were people of color.

32 My question is in related to drugs, particularly. We know that black
33 Americans are arrested for violating marijuana possession laws at nearly
34 four times the rates of white Americans, even though both groups
35 consume marijuana at similar rates. So, in your opinion, what percent of
36 civil asset forfeiture cases are related to marijuana specifically? And
37 whether or not you can speak to this, your thoughts on how
38 decriminalization of marijuana in Georgia would actually impact the
39 number of forfeiture cases and dollar amounts in forfeiture assets. Again,
40 even if you may not have the data where we could look for it, because I
41 think this is actually a crux of this issue. Thank you.

1 Scot Turner: I don't know that there's a way to figure out, from what's being reported
2 currently, what the nature of the crime that's related to the civil process.
3 The reports... I'm going to pull up, I'm going to try to find Macon, I know
4 that Macon's a very busy, Macon County. I'm going to try to pull up one of
5 the reports and I don't really have the ability to show you this, but you can
6 go and look at the link that I've provided, and you'll see this really big
7 PDF and... I can't even read it. Let me blow up the... but it has the
8 description, it has the date it was seized, it has the description of it,
9 potential value, and that's it. It doesn't say what case it's related to, who the
10 property owner is. And so, I would say to answer your question about
11 marijuana specifically, I can't answer it because the data isn't being
12 reported that way currently. That maybe something that we need to look at

13 Chantel Mullen: Mr. Bergman, did you want to weigh in on that question as well?

14 Gary Bergman: Actually, no, because he's right.

15 Chantel Mullen: [crosstalk 01:38:12] I'm sorry. I saw your hand raised.

16 Gary Bergman: My hand was raised because I've been trying to answer a question that was
17 raised earlier, and I couldn't figure out how to do it. I'm putting my own
18 hand up actually, but nobody seemed to notice. The question about who is
19 to enforce when there's been no report and they're supposed to report,
20 there is a statutory position about that. The DAs are required to enforce the
21 reporting requirements for all the law enforcement agencies within their
22 jurisdiction, okay? The state auditor is authorized to enforce the rules
23 regarding the failure to report by the DAs. So, there is a whole procedure
24 about that and there are punishments for failing, to not report when you're
25 required to report.

26 Chantel Mullen: Thank you. Do you happen to know that statute section of the top of your
27 head?

28 Gary Bergman: Yeah. I don't know it exactly, it's at 9-16-19-G. And it's towards the end of
29 that particular code section.

30 Chantel Mullen: Thank you. Thank you. All right. Well, we have reached our time for
31 today and I would like to thank each of our panelists for showing up for
32 today and giving your testimony. We've had four panels and each panel
33 has been very different and has given us a different perspective. The
34 committee will hold its next business meeting to discuss the testimony and
35 the themes regarding around civil asset forfeiture and to prepare for next
36 steps on this study. We will be meeting on Wednesday, August the 18th
37 from three to four.

1 : Our meeting is open to the public and you can use the link provided to
2 register online for that meeting. The record will remain open for the
3 duration of the committee study. If anyone would like to submit written
4 comment, please send your written comment to Melissa Wojnaroski and
5 her contact information is listed on the screen. If you provided your email
6 upon joining this meeting, we will follow up with you to provide the
7 minutes and the transcript from this meeting and a link to access the
8 records.

9 We've let you know when we are having our next meeting and we will
10 also notify you when we prepare our report and recommendations for the
11 Commission. This will conclude our meeting for today. Again, I'd like to
12 thank each of you for coming and sharing your testimony. Our meeting is
13 adjourned.

14 PART 4 OF 4 ENDS [01:41:29]