Melissa Wojnaroski: And please go ahead, Madam Chair.

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

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

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

After all of the panelists have concluded their statement, the committee members will engage them in questions and answers. To accommodate persons who are not on the agenda, but wish to make statements, we have scheduled one open session today at 3:15 PM. At the appropriate time when indicated to do so, anyone wishing to make a statement should press star three on their phone or use the raise hand feature on the web browser to request that their line be unmuted. In addition, written statements may be submitted by email to the United States Commission on Civil Rights, directed to Melissa Wojnaroski and her email address should be on the screen.
There we go. Her contact information is shown on the screen. You can also please call (202) 618-4158 for more information. Though some statements made today may be controversial, we want to ensure that all invited guests do not defame or degrade any person or any organization. As the Chair, I reserve the privilege to cut short any statements that defame, degrade, or do not pertain to the issue at hand. In order to ensure that all aspects of the issues are represented, knowledgeable persons with a wide variety of experience and viewpoints have been invited to share information with us. Any person or any organization that feels defamed or degraded by statements made in these proceedings may provide a public response during the open comment period. Alternately, such persons or organizations can file written statements for inclusion in the proceedings. I urge all persons making presentations to be judicious in their statements.

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

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

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

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

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

So, they're not arguing about going to jail. They are arguing about us
taking their stuff. And when we are able to do so, we feel like it's a win for
us because the simple fact, we feel like we're decreasing what they were
out here presenting to the community. With the state law here, we know
it's a minimum of $500. Again, we do look at the criminal history. We
utilize, like I said, our resources, whether it is a canine unit or a search
warrant, we do proceed to send these cases over within 30 days of the
initial arrest date. And again, with a criminal history, they don't have to be
certified of any particular crimes, but if the case is put together with
investigations and we're getting enough information to prove that these
funds or the property that they are having is obtained illegally, we will see
fit to forfeit on.

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

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

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

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

That's not how that goes. But we abide by all laws down here.

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

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

Chantel Mullen: We're going to hold questions until after all of our panelists have finished giving their statements today, but we thank you. You did fine. So, we will move on to our next panelist, who is Mr. Gary D Bergman, state prosecutor, prosecuting attorney's office of Georgia. Mr. Bergman, welcome and the floor is yours.
Gary Bergman: Thank you. Ah, there it is. So, some brief statements about me. I've been a prosecutor for 34 years. For the last 30, I've been involved with asset forfeiture. I've been teaching it for almost 30 years. In 2011, I was asked by the legislature to come down and be a part of a study committee, which was looking to uniform the civil forfeiture statutes in the states. At the time, there was about 34 of them and to engage in civil asset forfeiture reform. So, next. So, over the course of the next four years, we created the Georgia Uniform Civil Forfeiture Procedure act. What we did was we standardized the procedure for all forfeiture statutes.

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

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

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

All right. So, there's basically four theories of a forfeiture. The first is facilitation. Any property that was directly or indirectly used or intended for use to facilitate a violation of the law, we'll use for this case, the controlled substance act, okay, is subject to forfeiture. Proceeds is directly related to that. It's any property directly or indirectly used or intended for use to facilitate a violation of the controlled substances act or is the proceeds of that, is subject to forfeiture.
Then, the statute allows something called close proximity and that's basically, if you see drugs on a table and if you see a pile of money sitting next to those drugs, you don't have to prove that those are proceeds. The law presumes that because the money is sitting right next to the drugs, it's subject to forfeiture. So, that's the idea behind close proximity. And then the other one is weapons. Any weapon that is used, intended for use or is available for use is subject to forfeiture. And the reason for that is because, and I don't think I have to tell you this, is that our courts have said that weapons are a tool of the drug trade and in my experiences, they most certainly are. In any case that I was involved, there's always a weapon or two that is seized along with the drugs and then the other property. Next.

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

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

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

The person whose property was seized... A relatively quick hearing on this. Otherwise, it doesn't comport with due process. Okay, so you see 30 days from seizure, 60 days from seizure. Next. All right, so there are three
types of forfeiture proceedings. One is the quasi-judicial forfeiture proceeding. The other one is an in-rem forfeiture proceeding. And the third is the in-personam. And I'm going to talk about the first two, not really the third. The third is where you sue the individual. The in rem is where you treat the property as the defendants, and you seek forfeiture of those defendants. Next.

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

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

All right. So, you can either, if the property is over $25,000, or is real property, or the state just wants to, it can file a complaint for forfeiture. And generally, it's an in rem proceeding. For example, state of Georgia versus a one 2018 Honda Accord VIN whatsoever, $2,564 and 18 cents in U.S. currency and one Smith & Wesson pistol. Okay, and you would have three defendants, basically, the vehicle, the cash, and the weapon. Okay, again, only owners and interests’ holders can file an answer as opposed to a claim, can file an answer to the complaint. Okay, there are certain requirements for what has to be in an answer. The term owner and interest
holder has been construed to be very broad. There's no discovery unless a party seeks permission from the court to engage in discovery. And then, the court can basically control the extent of discovery and the timing of discovery.

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

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

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

So, you can't basically stick your head in the sand and say, "I don't want to hear what you're doing with my car. Even though it comes back every time you borrow it, and it smells of marijuana, and suddenly you have a lot of cash, whereas you're always broke", those types of things. Now, there is a vehicle exception in an innocent owner, which means that if you
share a vehicle with another person, even if you may be the title owner
and your spouse is doing all the drug dealing out of the car, you can't
claim innocent ownership because the law just presumes that you know
what's going on with the car you share with the other person. Okay, next
slide.

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

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

And then the third one is they're going to destroy it. And you may say,
"Why are you destroying this thing?" Well, some of these things are...
You're going to seize scales, those little electronic scales that you can buy
for $20, $30. Okay, and you're not going to put it back in the sale because
somebody is probably just going to use it for the same purpose. The law
enforcement probably doesn't want it. So, what you're going to do is you're
going to take a hammer and you're just going to smash it. Some law
enforcement agencies will destroy weapons under the theory that they
don't want to put them back into the stream of commerce. Not all of them,
but some of them. So those are the three ways you're going to do that.
Okay, next slide please.
All right. So, what you do is you take the fair market value of the in-kind distribution. Okay, you take the net sales amount of anything that the state required to be sold, and it's the DA that's doing this. And then you take the cash, and you pull all that together, and you come up with a value. Okay, and so from that value, let's say it was $20,000. Okay, the first thing you're going to do out of that $20,000 pool is you're going to pay costs, and that's going to be maybe law enforcement towed the car and had to pay a hundred bucks. Okay, you have filing fees and the court system. Okay, you're going to pay that. You may have had to publish that notice in the newspaper; you're going to pay that. So, all these things are going to come at you.

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

All right, so who does these orders of distribution? Well, it's submitted by the state attorney, and by state attorney, it's the district attorney, or because the attorney general is allowed under some statutes to file forfeiture provisions. Instead of saying the district attorney or where permitted the attorney general, we just used in the statutory scheme the term state attorney to mean either one of them. Okay, so the state attorney does the order of distribution, writes it up. He puts in a specific timeframe for the transfer, so it might say within 10 days from the date of this order, the seizing agency that has all the money will send the DA whatever amount of money it is, will pay costs this to this party, this to this party and lay it out, so that everybody knows exactly who's getting what. And then, excuse me. Because we want the political subdivision that has jurisdiction over the law enforcement agency to know what's going on, we provide a copy of the order of distribution to that CEO, whoever that is, it could be the mayor, it could be the county manager, it could be the elected county official, whoever the Chairman of the Commission.
Okay, and also the state attorney does not do this in a vacuum. Okay. He or she has to get permission, whatever he or she decides has to get the court's approval. So, the court has to sign off on it and it happens to be, it's not just a state court or magistrate court. It's the Superior Court of Georgia has to sign off on this order. And when I teach it, I always say, "Whatever you do get court approval, you may have three or four different orders, but for everything that you do get court approval." Okay. Next slide please.

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

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

All right, so who's required to create this form? Well, I can remember at this statute, during this legislative scheme, it went around and around, and they said, "Oh, we're going to have the courts do it." And then he said, "No, we're going to have POST do it, which is the police officer's training and team. No, we're not going to do it. And then finally, my boss was down there, and he said, "I'll tell you what, we're going to have the
Prosecuting Attorneys' Council create the form." And then he looked at me and he said, "And by we, I mean, you, Gary, you'll be writing the report." So, I created the report, and I'm happy to say or not happy to say that the only way you can file is on a report that was created by me. And I created the report based on what's required under the statute. However, I just told our IT people, what needs to be in the report. They actually created the report that you can find on our PAC website because, as I said, the reason why I'm not doing clicking my own things because, again, I am technologically illiterate. So, it is what it is. Next slide, please. Oh, well, we're done. So, I know you'll have questions, if you do I guess you'll wait to the end of all this, thank you so much.

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

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

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

In Georgia, you can be accused of a crime, go through your 30 to 60-day trial your property again, and rim forfeiture, and you lose your property.
And so, what I found is that there are two groups that basically oppose any type of reform when it comes to Civil Asset Forfeiture and re-establishing this concept that the innocent until proven guilty. And those are the Georgia Sheriffs' Association and the Prosecutor Attorneys' Council. With all due respect to the people who are in those roles, I never, once in my time in office, try to point the finger at them and say that they're to blame for this because they are not. The Prosecuting Attorneys' Council and the Georgia Sheriffs' Association are simply enforcing the law as written by the legislature. Where I've directed my ire is at legislators for not picking up the policy wall and running with this. But there have two really major things working against them politically, in order to attack this policy issue. And this is where bad policy leads to bad policy positions. Because Georgia Law incentivizes the use of Civil Asset Forfeiture to add the local budgets up to 100% of whatever is seized can go into a local budget. The Georgia Sheriffs' Association or Prosecuting Attorneys' Council are vigorously opposed to any effort to reform the law. And I know this from personal and a personal experience on the 22nd of January, I remember exactly where it was. I was driving home it was snowing. I was driving home from the-

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

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

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

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

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

So, I said, "Well, look, we'll address this in Georgia as well. If the amount exceeds $100,000, then you can participate in the federal equitable sharing program for our local law enforcement agencies. And the representative
from the Georgia Sheriff's Association looked me straight in the eye and said, "But then why would I want to enforce the law? I'm not incentivized anymore." Because the money mattered. The bottom line is it is about the money. Now, let me just go back real quick. Why are sheriffs so hard to fight in Georgia? And the answer is they outnumber their legislators, and they are the most popular elected officials in each of their counties. In my county, I live in Cherokee County, which is a central just north of Atlanta. You will see that my particular sheriff, my new sheriff wins with hundreds of thousands of votes and is the most popular man in this county.

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

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

Line 22. You see the word not in the middle. "An acquittal or dismissal in a criminal proceeding shall not preclude civil forfeiture proceedings." What this essentially... And that's what it says today. And then the word "not" is struck in the proposed legislation, because if you are found not guilty today in Georgia, it doesn't matter. It doesn't matter. You can be found not guilty by a jury of your peers in the court of law, and the state can still take your property under preponderance of the evidence in a civil proceeding before you even have your day in court on the criminal. And so, what this does is it re-establishes that concept of innocent until proven
guilty. And it says, "we will seize the property today." Under current law, a police officer in South Fulton pulls over somebody and they smell marijuana, and they find a pound or a kilo of some sort of banned substance along with a stack of cash, and they seize that vehicle based upon what they see as potential criminal activity.

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

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

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

That was what was seized, the car as well. What's interesting is Mr. Bergman mentioned a moment ago about how we have a requirement for
reporting in Georgia, civil asset forfeiture proceedings. And so, this
morning I went and looked at Banks County just to double-check. And in
2015 and 2016, they took $285,000 in cash over two years. After this story
broke in 2017, they did not file a report, 2018 they did not file a report,
2019, they did not file a report, and in 2020 they filed a report. They had
$27,000 and state level funds and $29,000 for federal funds, which is a
fraction of what they were collecting when they were out there on the
highway, targeting people of color. So, all of that, to say that there are
fixes, we can end or drastically reform the federal equitable sharing
program that would prevent the end-around for any state level reform.

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

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

So those are some of the fixes. But one of the things I want to reiterate,
and I said this once before during the course of my presentation, is that
this is not law enforcement's fault, and this is not... Even though the
Georgia Sheriff's Association comes out politically to fight it, it's not their
fault that this is the law. Our policy makers are the ones who have elected
titles, like State Representative, Senator, Lieutenant Governor, Speaker of
the House, Governor. These are the people who get to decide what the law
is. And I believe that people who put on a badge or go to work in a
courtroom protecting us from the criminal element can and still will be
able to use these tools to crack down on the criminal enterprise. And we can still honor the American promise of innocent until proven guilty.

Thank you, that's all I have for you guys today, and I appreciate your time. It's been an honor. And if you need me, there's my contact info.

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

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

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

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

Now that criminal enterprise may be as big as a cartel, or it may be as small as one particular person, who's just dealing drugs. Mostly when you think of criminal enterprises right now, there's a lot of gang activity that are criminal enterprises, there's families that are out there, that the whole family's just dealing in drugs. I would consider them to be a criminal enterprise. But, like I said, the way I teach it is that is the goal, okay? To
dismantle the criminal enterprise, take away the tools and to take away the profit from the crime. I hope that answers your question.

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

Chantel Mullen: Yes.

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

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

Richard Lawrence: Yes. Thank you.

Chantel Mullen: Thank you.

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

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

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

Chantel Mullen: Yes.

DeAndre Pickett: Okay. Thank you. And Madam Chair, actually, we always use Richard as our measuring tool because he actually did answer one of my questions and so I'm appreciative of that. So, I would just strictly go by doing a simple thank you to again, Representative Turner, Mr. Bergman, and Ms. Mckesey simply because of the fact that you have truly provided a ton of
education, particularly Representative Turner, who I have actually utilized some of your bills, including HB 107 and HB 111 to kind of piece together some of the questions that I've had for previous committees. And then of course, Mr. Bergman, literally breaking down a vast bit of information. And then of course, hearing from you Ms. Mckesey from an actual law enforcement individual who is actually doing the work. And so, I just wanted to simply say thank you to each one of you for providing the educational piece that you have.

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

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


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

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

Shannon Mckesey: Thank you.

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

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

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

Richard Lawrence: Thank you, Madam Chair. I'm curious if anyone has information, maybe Mr. Bergman, you do, since you mentioned it, how much property is actually destroyed? You mentioned the scales that are destroyed, but is there any number or value that you can assign to that?
Gary Bergman: I cannot. Again, I'm sorry. Every law enforcement agency, all those agencies are required to report. And one of the things to require to report, would it be if they destroy property, what did they destroy and what was the value of what they destroyed? But although the reports all come through the PAC, I don't actually look at any of them. My job is to create the report, and then what the PAC is, is basically a conduit. So, for example, law enforcement agencies, local law enforcement agencies have to report to their political subdivision, okay? The state agencies have to report to the state auditor. Multi-jurisdictional task forces have to report to every jurisdiction that's in their report. So, if there's like 20 different jurisdictions, they have to report to all 20 of those. What we have done by creating our report is...

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

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

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

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

James Hunt: Thank you, Madam Chair. And thank you to all the panelists. I just have a quick question, mainly for Mr. Bergman. It struck me when you were talking about the constitutional provisions that there's no right to a jury and on the more procedural side, there's no broad right to discovery, which are both required essentially in most civil cases, why were those left out in
Gary Bergman: Well, when I got involved with asset forfeiture, the 1991 version of the drug forfeiture statute had already been written and it allowed only for bench trials and that was taken up to the Supreme court. Actually, it was taken up... I represented the state in that case it's called Swales versus states, and the court basically said that these are equity cases. And if you know anything about equity cases, forfeiture is no different. And it was created in equity and that's why I think, long, long time ago in a place far, far away, they used Admiralty law to forfeit because they would forfeit the ships that came over and had illegal goods. And so, I think the federal rules are still bounded in the Admiralty statutes. I don't know that for sure. I don't do federal law, but that is why and the courts, our Supreme court upheld it.

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

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

Gary Bergman: You're welcome.

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

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

Scot Turner: Oh, sorry about that. Thank you for the question, Benita, it's good to see you. I did post in the chat, for anybody who's on the call, a link to the Carl Vinson institute database on civil asset forfeiture in Georgia and anybody that takes just a few minutes to go through that is going to probably need some Tylenol or some Advil within a short period of time to deal with the headache. It's just not easy to use. It uses PDFs, which means it's not
searchable. You can't look for specific types of transactions. In order to try to find a specific instance, you have to know the year it happened and which jurisdiction had that particular case and hope that the local office actually filed the paperwork and they're not all filing. As I mentioned, Banks County by specific name.

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

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

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

But if I could search by somebody's name or the property description or any types of things that a tech person would be to very quickly say, these are the things you want to be able to search for, boom, go look for it. I should be able to look for my name and as the property owner, I should be able to search for my name and not have to go through and select it the way it is. So, it's a mess Benita, it's a mess. And that's my opinion of it, but I do think it can be fixed and it starts with actually requiring or making
sure that the agencies that are using civil asset forfeiture are at least reporting something year over year.

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

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

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

Chantel Mullen: Yes, yes it does.

Scot Turner: Thank you.

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

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

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

Richard Lawrenc: So, this question is for Lieutenant Mckesey and I'm curious, what is your sense, Lieutenant, of how often you return property that has been seized after there have been no criminal charges or after there has not been a conviction of criminal charges?
Shannon Mckesey: So, basically, a little bit of my background was I have 17 years total on policing. I did 14 years in Atlanta before coming down to south Fulton. And when I came down to south Fulton, they were not forfeiting at all. They wasn't doing it at all. So, the crime initially was gangs and narcotics. When we first got down here, I looked at the whole totality of what the crime was and the first case that we forfeited on, it was a shock. It sent a shockwave through the whole city down here because they wasn't used to it, right?

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

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

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

Chantel Mullen: Yes.

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

Richard Lawrence: Thank you.

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

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

My question is in related to drugs, particularly. We know that black Americans are arrested for violating marijuana possession laws at nearly four times the rates of white Americans, even though both groups consume marijuana at similar rates. So, in your opinion, what percent of civil asset forfeiture cases are related to marijuana specifically? And whether or not you can speak to this, your thoughts on how decriminalization of marijuana in Georgia would actually impact the number of forfeiture cases and dollar amounts in forfeiture assets. Again, even if you may not have the data where we could look for it, because I think this is actually a crux of this issue. Thank you.
Scot Turner: I don't know that there's a way to figure out, from what's being reported currently, what the nature of the crime that's related to the civil process. The reports... I'm going to pull up, I'm going to try to find Macon, I know that Macon's a very busy, Macon County. I'm going to try to pull up one of the reports and I don't really have the ability to show you this, but you can go and look at the link that I've provided, and you'll see this really big PDF and... I can't even read it. Let me blow up the... but it has the description, it has the date it was seized, it has the description of it, potential value, and that's it. It doesn't say what case it's related to, who the property owner is. And so, I would say to answer your question about marijuana specifically, I can't answer it because the data isn't being reported that way currently. That maybe something that we need to look at.

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

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

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

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

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

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

Chantel Mullen: Thank you. Thank you. All right. Well, we have reached our time for today and I would like to thank each of our panelists for showing up for today and giving your testimony. We've had four panels and each panel has been very different and has given us a different perspective. The committee will hold its next business meeting to discuss the testimony and the themes regarding around civil asset forfeiture and to prepare for next steps on this study. We will be meeting on Wednesday, August the 18th from three to four.
Our meeting is open to the public and you can use the link provided to register online for that meeting. The record will remain open for the duration of the committee study. If anyone would like to submit written comment, please send your written comment to Melissa Wojnaroski and her contact information is listed on the screen. If you provided your email upon joining this meeting, we will follow up with you to provide the minutes and the transcript from this meeting and a link to access the records.

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

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