



## Georgia Advisory Committee to the U.S. Commission on Civil Rights

# Civil Asset Forfeiture and its Impact on Communities of Color in Georgia

Civil asset forfeiture is a legal practice that allows law enforcement to take private property that they believe was either involved in or derived from the commission of a crime.<sup>1</sup> The property owner does not need to be charged with a crime; officers need only probable cause to seize the suspected property.<sup>2</sup> In order to then forfeit the seized property, the state is required demonstrate the property's connection to the alleged criminal activity. However, in Georgia and in nearly all states, this process most often happens administratively (without the oversight of a judge), and the evidentiary standard for this determination is low – much lower than it is for criminal convictions.<sup>3</sup>

Advocates have long raised concern that civil asset forfeiture creates inappropriate financial incentive for law enforcement to seize private property without just cause and denies property owners many of the legal protections afforded to individuals facing criminal charges. Revenue generated through civil asset forfeiture has risen significantly over the past several decades. From 1986-2014, revenue to the U.S. Department of Justice from civil asset forfeitures reportedly rose from \$93.7 million to \$4.5 billion annually, an increase of 4,667%.<sup>4</sup>

In 2022, the Georgia Advisory Committee to the U.S. Commission on Civil Rights conducted a study of the impact of civil asset forfeiture in Georgia.<sup>5</sup> The Committee's study included a particular focus on communities of color that are overrepresented throughout the criminal justice system and may be disproportionately vulnerable to civil asset forfeiture abuses. The Committee sought to identify related civil rights concerns as well as best practices and solutions to address them.

### Why do we have civil asset forfeiture?

Civil asset forfeiture was originally developed to allow law enforcement to disrupt major organized criminal activity

<sup>1</sup> Carpenter, D. M., Knepper, L., Erickson, A. C., & McDonald, J. (2015). Policing for profit: The abuse of civil asset forfeiture (2nd Ed.) Arlington, VA: Institute for Justice. <https://ij.org/report/policing-for-profit-2/>.

<sup>2</sup> Ibid.  
<sup>3</sup> Ibid, Executive Summary.

<sup>4</sup> Carpenter, D. M., Knepper, L., Erickson, A. C., & McDonald, J. (2015). Policing for profit: The abuse of civil asset forfeiture (2nd Ed.) Arlington, VA: Institute for Justice. <https://ij.org/report/policing-for-profit-first-edition/executive-summary/>

<sup>5</sup> The Committee's full report and its appendix materials are available here: <https://www.usccr.gov/reports/2022/civil-asset-forfeiture-and-its-impact-communities-color-georgia>

### Key Points:

- Civil asset forfeiture allows law enforcement to take property from people without charging them with a crime. Its original purpose was to disrupt large-scale criminal activity that is otherwise outside the reach of U.S. criminal law.
- Today, most forfeitures are not targeting high-level criminal activity, but are instead primarily impacting low-income individuals who are rarely charged with a crime. This can have a devastating impact on cycles of poverty, food and housing instability, and community/police relations.
- In most cases, law enforcement keeps the proceeds from seized property. There are few accountability measures to ensure that agencies do not abuse this financial incentive.
- Black, Latinx, AAPI, immigrant, and low-income communities may be particularly vulnerable to civil asset forfeiture abuses.

that was otherwise outside of reach of U.S. criminal law.<sup>6</sup> However, testimony from the Committee's study highlighted that despite the steady increase in civil asset forfeitures, modern extradition treaties now allow the U.S. government to prosecute people all over the world under criminal law,<sup>7</sup> rendering civil asset forfeiture unnecessary in most or many circumstances.

### What does civil asset forfeiture look like in Georgia?

From 2016-2018 Georgia law enforcement agencies reported an aggregate of \$49,073,127 in state revenues and \$4,452,238 in state net income from the sale of assets seized under civil asset forfeiture.<sup>8</sup> Between 2015-2018,

<sup>6</sup> Nelson Testimony, Transcript I, p. 12 lines 9-22; p. 14 lines 31-34; Cooke Testimony, Transcript III, p. 4 lines 12-13; Banjo Testimony, Transcript III, p. 5 lines 17-23; Bellamy Testimony, Transcript I, p. 15 lines 30-35; Guze Testimony, Transcript I, p. 19 lines 35-38.

<sup>7</sup> Alban Testimony, Transcript I p. 23 lines 2-6; 14-16.

<sup>8</sup> Randolph, Erik and Brockway, Buzz, Civil Asset Forfeitures in Georgia: Procedures, Activity, Reporting, and Recommendations, Georgia Center for Opportunity, March 2020, at: [https://georgiaopportunity.org/wp-content/uploads/2020/03/20-011-GCO-Civil-Asset-Forfeit\\_v3.pdf](https://georgiaopportunity.org/wp-content/uploads/2020/03/20-011-GCO-Civil-Asset-Forfeit_v3.pdf)

58% of the forfeited property at the state level was cash, half worth less than \$540.<sup>9</sup> The relatively low value of cash seized suggests that these forfeitures are not being targeted at high-level organized criminal activity as intended, and may be impacting vulnerable, low-income community members instead.

People whose property is seized through civil asset forfeiture do not have the right to a public attorney as those facing criminal charges do. In most cases, the comparatively low value of the property makes it unreasonable to hire an attorney, so a majority face forfeiture proceedings unrepresented.<sup>10</sup> This, coupled with the low evidentiary standard, means that most owners of seized property are unsuccessful in getting their property back.<sup>11</sup> Panelists pointed out that the median rent in Georgia is \$600.<sup>12</sup> For many, losing even relatively small cash amounts can create food and housing instability, perpetuate cycles of poverty, and further damage already strained community/police relations.<sup>13</sup>

## How does civil asset forfeiture disproportionately impact communities of color?

People of color generally, and Black people specifically are overrepresented at nearly every stage of the criminal justice system—including in police contacts and property seizures.<sup>14</sup> Additionally, a history of lending discrimination and learned distrust of financial institutions has made cash transactions especially common in many Black, Latinx, immigrant, and lower-income communities.<sup>15</sup> Yet, law enforcement often views the mere presence of cash as indicative of a crime,<sup>16</sup> making people who carry cash disproportionately vulnerable to civil forfeiture abuses.<sup>17</sup> Underscoring concern that some law enforcement agencies

may actually target individuals least likely to contest property seizure, data show that arrest rates for Black and Hispanic individuals increase during times of fiscal stress, when law enforcement can most benefit financially from forfeiture.<sup>18</sup>

## What constitutional protections does civil asset forfeiture challenge?

Seizures processed under civil rather than criminal law deny property owners of many due-process protections, including the presumption of innocence, the right to an attorney, and protection against forced self-incrimination.<sup>19</sup> Other constitutional concerns raised during this study included protection against unreasonable search and seizure and excessive fines and fees.<sup>20</sup>

### Recommendations (*selected*)

- (1) The U.S. Congress and Georgia Legislature should eliminate civil asset forfeiture, as New Mexico, North Carolina, and Nebraska have done.
- (2) In the alternative, law makers could consider the following reforms:
  - Requiring the criminal conviction of property owners before proceeding with seizure of personal property;
  - Affording the legal right to counsel for owners of property seized;
  - Increasing evidentiary standards;
  - Establishing strict data collecting and reporting protocol to monitor for disproportionality and abuses.

<sup>9</sup> Nelson Testimony, Transcript I, p. 14 line 35; Banjo Testimony, Transcript III, p. 5 lines 17-23 - p. 7 lines 6-29; Turner Testimony, Transcript IV, p. 17, lines 17-21; Alban Testimony, Transcript I, p. 5 line 16 – p. 6 line 18; McDonald Testimony, Transcript II, p. 12 lines 20-25 & p. 26 lines 8-14; McCall Dodson Testimony, Transcript I, p. 8 lines 26-39

<sup>10</sup> Nelson Testimony, Transcript I, p. 13 lines 7-38; p. 14 lines 35-37; Alban Testimony, Transcript I, p. 6 lines 3-5; McDonald Testimony, Transcript II, p. 11 lines 19-28; McCall Dodson Testimony, Transcript I, p. 8 line 37 – p. 9 line 6; Griggs Testimony, Transcript III, p. 11 lines 32-35.

<sup>11</sup> Cochling Testimony, Transcript II, p. 23 lines 4-14; McDonald Testimony, Transcript II, p. 22 lines 24-30.

<sup>12</sup> McCall Dodson Testimony, Transcript I, p. 10 lines 1-9.

<sup>13</sup> Banjo Testimony, Transcript III, p. 6 lines 3 - 33; Griggs Testimony, Transcript III, p. 9 lines 18-21, 23-24.

<sup>14</sup> Alban Testimony, Transcript I, p. 3 lines 15-22 & p. 6 lines 19-21; Griggs Testimony, Transcript III, p. 8 lines 39-41 – p. 9 lines 1-3, 13-21; p. 11 lines 36-37; p. 26 lines 7-37; Harris Testimony, Transcript III, p.19 lines 13-16 – lines 28-31; Turner Testimony,

Transcript IV, p. 17, lines 17-21; McCall Dodson Testimony, Transcript I, p. 8 lines 1-29; McDonald Testimony, Transcript II, p. 11 lines 29-35; Bellamy Testimony, Transcript I, p. 16 line 38 – p. 17 line 5; Cochling Testimony, Transcript II, p. 5 lines 22-26; Banjo Testimony, Transcript III, p. 6 lines 34-38; Nelson Testimony, Transcript I, p. 12 line 23 – p. 13 line 4.

<sup>15</sup> Nelson Testimony, Transcript I, p. 14 lines 1-8

<sup>16</sup> Nelson Testimony, Transcript I, p. 14 lines 37-39; Griggs Testimony, Transcript III, p. 9 lines 18-21, 23-24.

<sup>17</sup> McDonald Testimony, Transcript II, p. 11 line 35 – p. 12 lines 4-19.

<sup>18</sup> Alban Testimony, Panel I Presentations, Slide 32. See also: Makowsky et. al, “To serve and Collect: The Fiscal and Racial Determinants of Law Enforcement,” Journal of Legal Studies, 2019.

<sup>19</sup> Turner testimony, Transcript IV, P. 16 line 35-p. 17 line 5; Alban Written Testimony, Appendix V

<sup>20</sup> Ga. Const. art. I, sec.1, para. 17.

The United States Commission on Civil Rights maintains 56 Advisory Committees, one for each state and territory, and the District of Columbia. Each committee is composed of citizen volunteers familiar with local and state civil rights issues. The members assist the Commission with its factfinding, investigative, and information dissemination functions.

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