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EQUITABLE SHARING AIDS CIRCUMVENTING STATE CIVIL ASSET FORFEITURE

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Abstract

Civil Asset Forfeiture (CIVIL ASSET FORFEITURE) is a disputable law enforcement asset utilized to combat the war on drugs and criticized as an abusive practice. Are law enforcement agencies really combatting the war on drugs using civil asset forfeiture law or just using the law for their own self interests? Civil Asset Forfeiture abuse relates to perverse incentives which are further aided by the federal equitable sharing program (ESP). Civil asset forfeiture law allows owners' assets to be seized and forfeited, by law enforcement agencies without a warrant and/or a criminal conviction. When federal agencies adopt and prosecute, state and local law enforcement agencies civil asset forfeiture cases, the process has been viewed as incomplete, and circumvents state law for financial gain. This thesis will examine how state civil asset forfeiture and the federal equitable sharing program impede law enforcement responsibility and evade state civil asset forfeiture laws. A gap in the literature exists in support or against the federal equitable sharing program. A review of the literature indicates much needed reform on state civil asset forfeiture, suggesting the elimination or the closure of the federal equitable sharing program ambiguity.

Keywords: civil asset, forfeiture, equitable sharing reform, perverse incentive, circumvent, assets, war on drug, international, transnational, terrorism, Patriot Act

EQUITABLE SHARING AIDS CIRCUMVENTING STATE CIVIL ASSET FORFEITURE

The inception of the war on drugs movement began during 1971 under the auspices of President Richard Nixon. President Nixon fought to eradicate the problem of drugs flooding the United States. Research conducted by (Blumenson and Nilsen, 1998) highlight that 25 years of the war on drugs fight, has been a failure. For instance, marijuana and crack cocaine was readily available at a low cost, creating underprivileged teenagers' drug dependency and billions in annual medical cost for drug rehabilitation (Evelynn, 2016). Additionally, the war on drugs had a hidden economic agenda that was used strategically for overcoming bureaucratic hurdles to win a political office, such as the presidency (Evelynn, 2016). Throughout the years, since President Nixon coined the phrase "The War On Drugs", this movement has been expanded upon by his successors to include; mandatory sentencing guidelines (President Ford), lenient laws for marijuana users (President Carter), punitive measure assess for drug users (President Regan – zero tolerance program), increased federal funding for law enforcement agencies (President George H Bush), increased drug rehabilitation spending (President Clinton), and implementation of student drug testing (President George W. Bush) (Evelyn, 2016). Forty years later and a mass amount of funding appropriated to the war on drugs in the amount of \$26 billion in federal aid and \$25 billion in state and local aid, Congress continues with the same tactics, pouring more funding into a losing cause. To add insult to injury, the passage of the Comprehensive Crime Control Act of 1984 encompass' the provision of civil asset forfeiture, which granted law enforcement agencies the power to seize and forfeit property. Civil asset forfeiture is an *in rem* (against the property) proceeding, in which property is seized but no criminal charges are bought against the property owner (Latshaw, 2015).

Civil Asset Forfeiture through legislation is a legal mechanism used to disrupt, cripple, and dismantle criminal organizations. Through the confiscation of assets or instrumentalities used to obtain ill-gotten gains by nefarious criminal activities. Today, the practice of civil asset forfeiture has become deeply flawed at each governmental level of law enforcement, federal, state, and local. Of notice, the practice of civil asset forfeiture has been linked to the violation of Constitutional rights of illegal search and seizure and due process. In addition, there were no procedural safeguards for property owners because civil asset forfeiture process is against the property used in the commission of a crime, not the owner of the property seized. Furthermore, the practice of civil asset forfeiture does not require a warrant before property can be seized. As a result, law enforcement agencies have used this practice to benefit their agenda, such as the profit from civil asset forfeiture proceeds rather than crime-fighting. However, according to law enforcement agencies civil asset forfeiture is necessary to continue fighting the war on drugs since criminals should not profit from their ill-gotten gains (Worrall, 2001). To address this disagreement of civil asset forfeiture and theoretically create a balance between the government and its citizens, Congress passed the Civil Asset Forfeiture Reform Act 2000 (Civil Asset Forfeiture Reform Act). Nevertheless, Civil Asset Forfeiture Reform Act 2000 only applied to federal forfeiture cases, leaving states to enact their own reform (Certified Commercial Investment Member, 2006). Civil Asset Forfeiture Reform provided innocent property owners the ability to contest forfeiture of their property and indigent property owners are afforded counsel and compensated for damages to property while in the government's possession. Subsequently, eliminating the cost bond and the government must pay interest to the owner for post-judgment interest on any money judgments (Public Law 106-185—APR. 25, 2000 Civil Asset Forfeiture Reform Act 2000). Moreover, Civil Asset Forfeiture Reform Act integrates

individual states which would reform or abolish civil asset forfeiture entirely. Consequently, state-level civil asset forfeiture is plagued by the federal equitable sharing program. Whereby critics acknowledge the equitable sharing program as a means to financially and incentivize state and local law enforcement agencies (Snead, 2016).

Prior to Civil Asset Forfeiture Reform Act, research on civil asset forfeiture centered around the violation of due process, the lack of procedural safeguards for innocent property owners, financial incentives for law enforcement, and the standard of proof for seizures. In 2002, Chi conducted a study of civil asset forfeiture practice stemming from a violation of due process, no innocent owner defense, and law enforcement self-financing. Chi's (2002) study concluded that by granting law enforcement agencies the power to seize and forfeit citizen's property without a warrant, paved the way for financial incentives. Also, the structuring of law enforcement's primary responsibilities to serve and protect, to become seize valuable assets. Secondly, the innocent property owners were not afforded any constitutional rights because civil asset forfeiture is against the property, not the individual. As a final point, the proceeds from civil asset forfeiture can lead to law enforcement agencies becoming self-financed. A self-financed law enforcement agency would be detrimental to society and the political arenas. For instance, the absence of legislative oversight results in law enforcement agencies being guided by their own moral laws. Also, having no budgetary restrictions creates a contradiction of the separation of powers, in essence a failure in the checks and balances system. Ultimately, law enforcement agencies would reject governmental regulations, thus creating their own regulations (Chi, 2002). Moores' conducted a study during that posits reforming civil asset forfeiture to include an innocent property owner's defense and court appointed counsel for indigent owners. The result of Moores' study concluded that based on the lack of procedural protection for the

property owner, 80% of the owners whose property was seized are never charged with a crime. Whereby, only 20% of the owners whose property is seized under civil asset forfeiture contested. Furthermore, civil asset forfeiture will continue to increase due to the broad powers of the law enforcement agencies and the financial incentives afforded the states, resulting in citizens being bridled toward law enforcement (Moore, 2009).

Despite the reform of civil asset forfeiture, current literature focuses on an area of civil asset forfeiture reform not identified by the federal or state government comprising the equitable sharing program. Blumenson and Nilsen (2001) conducted a study of the equitable sharing program that concluded civil asset forfeiture combined with equitable sharing, is the cause of law enforcement agencies' misguided enforcement powers and law enforcement agencies' budgets being supplemented through forfeiture proceeds. Furthermore, Blumenson and Nilsen (2001), acknowledged the need for additional civil asset forfeiture reform to include the dismantling of law enforcement's ability to effectively determine how much civil asset forfeiture proceeds they retain and how the civil asset forfeiture proceeds are spent. In addition, supplementing budgets through circumventing state regulation restriction flies in the face of the United States Constitution, Article 1 (Blumenson and Nilsen, 2001).

Civil Asset Forfeiture History

During biblical times, if an inanimate object (an animal) caused the death of a human being, the animal would be slaughtered, and the owner could not profit from the death of the animal (Moore, 2009). This religious law is rooted in the theory of forfeiture, known as *deodand* and is derived from Latin *Deo dandum*, which means a thing to be given to God (Legal Dictionary). The theory of *deodand* comes from the Old Testament and means, "to be given to

God” (Schwarcz & Rothman, 1993). *Deodand* was not adopted into the United States common law, but the theory of *in rem* proceedings was (Weld, n.d.). In the 17th century, the United States Congress implemented the *in rem* proceedings against cargo ships that docked and the owners went missing. The process of civil asset forfeiture allowed the government to seize cargo ships in violation of custom and/or admiralty regulations, especially smuggling of contraband (Mihm, 2017).

During the 1970’s, Congress passed the Comprehensive Drug Abuse Prevention and Control Act due to the war on drugs. The Comprehensive Drug Abuse Prevention and Control Act provided law enforcement agencies the mechanism to seize assets profited, purchased, and used during the commission of a crime, especially contraband. In 1984, civil asset forfeiture was expanded when Congress passed the Comprehensive Control Act which granted law enforcement the authority to retain civil asset forfeiture proceeds instead of depositing the civil asset forfeiture funds into the United States Treasury’s general fund. In addition, a provision allowed joint investigation among federal, state, and local law enforcement agencies, whereby, civil asset forfeiture proceeds were shared between law enforcement agencies through the equitable sharing program (Southern Poverty Law Center, 2017). Through the equitable sharing program combined with the retention of assets seized, some critics (ACLU, public opinion, and media), view law enforcement agencies as being financial incentivizing.

Types of Civil Asset Forfeiture

Three categories of forfeiture are utilized by law enforcement agencies; administrative, civil, and criminal (Department of Justice, n.d.). Although all point to a provision, administrative, civil and criminal asset forfeiture, of functionality to strip the criminal of their ill-gotten property, indeed, civil asset forfeiture is where the controversy stems. To gauge the

impact of civil asset forfeiture, a distinction must be prepared between administrative, civil, and criminal forfeitures. Conversely, there is one commonality between the three forfeitures, the requirement of probable cause before the process is initiated.

Unlike civil asset and criminal forfeiture cases, administrative forfeiture is a non-judicial civil process whereby the cases are uncontested, there is no court involvement, and cases are only pursued upon the authority of a federal agencies, such as Federal Bureau of Investigation (FBI), Drug Enforcement Agency (DEA), Internal Revenue Service (IRS) and Department of Treasury, to name a few. Furthermore, the property forfeited administratively encompasses all forfeitable property with a value of less than \$500,000, excluding cash and other monetary instrument (Dery, 2012). However, houses and other real property are not forfeitable administratively. In contrast, civil and criminal asset forfeiture is judicial proceedings that are adjudicated in a courtroom. Yet, both civil and criminal asset forfeiture processes differ. Civil asset forfeiture as previously stated is known as an *in rem* action, which the action is against the property, not the owner of the property as in the case of U.S. v. 1974 Cadillac Eldorado Sedan (1974). Civil asset forfeiture does not require a warrant to seize property nor a criminal conviction for property to be forfeit. Also, there is no right to counsel afforded to the owner of the property that is seized and forfeited because the defendant in the case is the property potentially linked to a criminal activity, not the property owner. In addition, rarely, if at all, civil asset forfeiture involves criminal proceedings or an arrest. For the most part the property which is seized and forfeited remains with the arresting agency. When property is seized and forfeited under civil asset forfeiture the government is not required to prove the criminal guilt, just show there is a linkage between the criminal activity and the seized property. In comparison, criminal asset forfeiture is referred to as an *in personam* action, which the action is against the individual,

specifically, *U.S. v. Madoff* (2010). Besides, criminal asset forfeiture requires a warrant and a criminal conviction prior to property being seized and forfeited. What's more, the defendant has the right to counsel based on the fifth and sixth amendments of the U.S. Constitution which provides the rights of protection and counsel during criminal trials. In addition, the burden of proof is on the government to prove the guilt and liability of a defendant, by a reasonable doubt. One caveat for criminal asset forfeiture, if a person is found not guilty their property is returned according to *Tan Nguyen v. U.S.* (2000). Furthermore, Dery (2012) states that 80% of all federal forfeiture cases are administrative forfeitures.

Appropriate and damaging uses of civil asset forfeiture

The purpose of asset forfeiture, civil or criminal, was to eradicate criminal organizations by dismantling, depriving, or taking away the tools or instruments the criminal used to commit their crime while impoverishing the criminal and compensating crime victims for the loss they suffered (FBI, 2017). In like manner, during April 2016, the Manhattan U.S. Attorney filed a civil forfeiture complaint to recover proceeds of \$100 million wire fraud scheme from at least 20 accounts worldwide. In the same way, the U.S. Attorney for the Western District of Kentucky was able to prevail in the case of diverted and stolen funds of \$1,124,273.35 which was intended for political campaigns, PACs, and non-profit organizations (FBI, 2015). According to the Federal Bureau of Investigation (2017), crime victim compensation over two fiscal years has been more than \$100 million. Furthermore, since the year 2000, a total of \$4 billion in forfeited funds have been returned to crime victims (FBI, 2017). In comparison, when civil not criminal asset forfeiture is improperly utilized by law enforcement agencies, the results are financial self-interest, unethical behavior, and a nightmare for citizens. On the other hand, between 2008 and 2012 the Fulton County District Attorney Paul Howard office spent approximately \$344,000 in

state forfeiture funds on office parties, church donations and home security updates (Associated Press, 2013). In like manner, when a 72-year motel business owner, Russ Caswell's motel was forfeited by the government due to a minuscule amount of people visiting the motel over 14-year period was arrested for drug related crime. The motel was valued more than \$2 million and approximate legal fees of \$1 million to contest the forfeiture. Mr. Caswell won his case and the forfeiture proceeding was rescinded and the government had to reimburse the legal fees (Kreft, 2014).

State-Level Civil Forfeiture Controversies

Transparency

Civil asset forfeiture laws vary by states and some may even follow the federal government guidelines. For instance, federal law enforcement agencies require transparency. All civil and criminal forfeitures include the distribution of civil asset forfeiture proceeds through the equitable sharing program. The compilation of forfeiture data reported is utilized to prepare annual audit reports of total forfeiture funds, expenses paid, and the designation of the funds that were transferred. In contrast, individual state regulations specify how the forfeiture proceeds are maintained and what percentage is retained by the arresting agency. Such as, under the New Jersey statute N.J.S.A. 2C:64-1, law enforcement agencies retain 100% of forfeiture proceeds. Whereby, North Carolina statute N.C. Gen. Stat. §§75D-5, 90-112, forfeiture proceeds are used to fund public schools, while law enforcement agencies retain 0% (Institute of Justice, 2015). Yet, the difference relates to the lack of transparency by state and local law enforcement agencies. Thirty-three states plus the District of Columbia has a reporting requirement for forfeiture cases. For example, under Arizona law, Ariz. Rev. State §13-2314.01, et. seq. law enforcement agencies are required to file quarterly forfeiture reports with the Arizona Criminal

Justice Commission, which an aggregated report is submitted to Legislature (American Legislative Exchange Council, 2014).

Individual states imposed restrictions on the percentage (0%, 50%, or 100%) of civil asset forfeiture proceeds retained by the arresting law enforcement agencies combined with the standard of proof, are the determining factors whether state and local agencies partake in the federal equitable sharing program. The outcome is twofold; circumventing of state regulations equates to retaining all forfeiture proceeds otherwise restricted. The outcome was sustained by a study conducted by (Holcomb, Williams, Hicks, Kovandzic and Meitl, 2018), using the equitable sharing program as a dependent variable and three independent variables; (1) the existence of state-level civil asset forfeiture reform, (2) the innocent owner defense, and (3) a rise in the burden of proof. In comparison, a study conducted by (Worrall & Kovandzic, 2008) suggests there is an inverse relationship between states with restriction on forfeiture proceeds and those states without restriction. States that restrict whether the arresting agency either retained zero, 50% or 100% of the civil asset forfeiture proceeds coupled with a higher standard of proof (clear and convincing evidence), were more likely to utilize the equitable sharing program. On the contrary, states with less restriction on the forfeiture proceeds coupled with a lower standard of proof (preponderance of evidence) were less likely to utilize adoptive forfeiture. As previously mentioned, a gap in the literature exists; the Holcomb et al. (2018) study is skewed because the data utilized was retrieved from the federal asset forfeiture database which comprises civil and criminal forfeiture proceeds. In as much, the majority of state regulations lack the requirement of transparency reporting. So, the Holcomb et al study illicit participants from municipal police and sheriff department with 100 or more officers, and the utilization of the 2013 Law Enforcement

Management and Administrative Statistics and Bureau of Justice Statistics (Holcomb et al., p 107).

Reform

Civil asset forfeiture abuse has played out in the media earning a mixture of headline titles, such as “Stopping the Abuse of Asset Forfeiture” (Walberg, 2014), “Ending Abuse In Law Enforcement Asset Forfeiture” (Corsi, 2014), “Highway Robbery: Civil Asset Forfeiture In Nevada” (Greg, 2014), and “This Federal Program Lets Cops Seize Cash”, “Evade State Laws and Keep Over a Billion Dollars” (Sibilla, 2014). These headlines are just a few of the countless articles spotlighting the abuse, but it doesn’t stop there. In the political arena, John Yoder and Brad Cates were instrumental in civil asset forfeiture law, are now calling for the abolishment of the law. Largely due to the corruptive undertone and that it goes against the judicial system, where innocent until proven guilty (Brad Cates, 2015). Finally, the American Civil Liberties Union (ACLU) has a petition calling for the reform or abolishment of civil asset forfeiture. Civil asset forfeiture was intended to fight the war on drugs, so under that premise, it’s easier for law enforcement to utilize the civil asset forfeiture law. Thereby, based on Civil Asset Forfeiture Reform Act 2000, individual states had reformed their civil asset forfeiture laws. As reported by the American Legislative Exchange Council:

25 states including the District of Columbia have reformed their civil forfeiture laws; fourteen states required a criminal conviction for most or all forfeiture cases. For example, under North Carolina, N.C. Gen Stat. §§ 75D-5, 90-112, criminal asset forfeiture requires criminal conviction, nevertheless civil forfeiture is available in racketeering cases and the standard of proof is by the preponderance of evidence and the arresting agency does not receive any

forfeiture funds, goes to public education. Fifteen states and the District of Columbia require the government to bear the burden of proof for innocent owner claims. For example, under California Cal. Health & Safety Code § 11495, § 11488.4, cash valued under \$40,000 or other property (real estate, vehicles) requires a criminal conviction prior to seizure and 66.26% of forfeiture proceeds go to law enforcement. Seven states and the District of Columbia have passed anti-circumvent legislation to close the equitable-sharing loophole. Under District of Columbia, D.C. Code § 41-312, standard of proof is by the preponderance of evidence, but for motor vehicles, real property and currency up to \$1,000, the standard of proof is by clear and convincing evidence. On the other hand, if the real estate is the primary residence of an owner, the owner must be convicted of an offense. All currency and proceeds from the sales forfeiture is deposited in the general fund (American Legislative Exchange Council, 2014). As detailed in (Appendix A) the table provides asset forfeiture by state.

Critics, like the American Civil Liberties Union, believe that state civil asset forfeiture reform did not go far enough, because of the federal equitable sharing program ambiguity (Snead 2016). Snead (2016) characterized the equitable sharing program as a “loophole” which financially incentivizes state and local law enforcement agencies (para. 9). Nevertheless, civil asset forfeiture reform raises the burden of proof from preponderance of evidence to clear and convincing evidence. Whereby, the government must win the civil asset forfeiture case by clear and convincing evidence, otherwise, the decision will be in the favor of the innocent property owner. Another issue undertaken was providing the indigent with right to counsel. Therefore, many states have placed restrictions when it’s applicable for state law enforcement agencies to

utilize the adoptive forfeiture. Adoptive forfeiture, as previously disclosed, is the process whereby state and local law enforcement agencies request federal law enforcement agencies to adopt their civil asset forfeiture case and prosecute under federal regulations. Lastly, some states civil asset forfeiture regulations designate forfeiture proceeds either go into a general fund to be disbursed to other non-law enforcement departments, such as public education. Conversely restricting the percentage of forfeiture proceeds to be retained by the arresting agency or abolishment of civil asset forfeiture practice. Such as, the states of New Mexico, Montana, and Nebraska have abolished the practice of civil asset forfeiture because each state requires that the government must obtain a criminal conviction before taking and keeping people's property. Remember, a criminal conviction was not a requirement under civil asset forfeiture for law enforcement to seize and forfeit owner's property. Under New Mexico Stat. Ann § 31-27-9 (2016) & SB 202 (2017) law enforcement agencies have the burden of proof to prove by clear and convincing evidence that the property forfeited facilitated or is an instrumentality of the criminal activity. In addition, the request for the federal adoptive process is only applicable when the property seized is valued more than \$50,000 coupled with the criminal conduct stemming from an interstate seizure. Indeed, all or 100% of the civil asset forfeiture proceeds are placed in a general fund. As illustrated, Nebraska Revised § 28-431 (2017) & LB 106 (2016), prerequisite for property to be forfeited is a criminal conviction for drugs, child pornography or illegal gambling charges. The state has the burden to prove that the property forfeited is by clear and convincing evidence associated with a criminal activity. Only 50% of the civil asset forfeiture proceeds are maintained by the arresting agency, the remaining 50% is preserved to finance public education (4, 5). To end with, of the remaining twenty states which have not reformed their civil asset forfeiture statute, New Jersey Statute N.J.S.A. 2C:64-1, is an example where no

protection for an innocent owner, the burden of proof is by the preponderance of evidence and 100% of the forfeiture proceeds is retained by the arresting agency (Asset forfeiture laws by state, 2017) (See Appendix A).

Monetary Motivator

Hadaway (2000) criticized the use of civil asset forfeiture as a means of generating revenue. His view:

The use of forfeiture as a means of generating revenue represents [as] of the most serious threats to personal liberty in U.S. history. Not since the writs of assistance, which helped to inspire our revolution against the British Crown, has a U.S. government mandated that law enforcement officers be allowed, in essence, to eat what they kill. However, because we now enter the new century at a time when most Americans seem to feel a certain material contentment, and because talk of reforming our drug law is anathema to most politicians, there is little political agitation for any examination of this problem (Worrall, 2004, p 227).

The equitable sharing provision available under the Comprehensive Crime Control Act of 1984¹ made it possible for federal agencies to share proceeds derived from civil asset forfeiture with other law enforcement agencies. As a result, of this means, state or local law enforcement agencies receive up to 80% of the proceeds from the civil asset forfeiture (Moores, 2009). Since the inception of the federal equitable sharing program, according to the Institute for Justice (2015), millions if not billions of dollars received by state and local law enforcement agencies have been amassed, which expands 3 decades. Ehlers' (1999) study of federal adoption and

¹ National Criminal Justice Reference Service, NCJ 123365
<https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=123365>

equitable sharing payments from the Department of Justice and Treasury for the period (1986 to 1998) showed equitable sharing payments had progressively increased. In the year 1986, \$22.8 million equitable sharing payments were derived from the Department of Justice. It wasn't until the year 1998, that equitable sharing payments were received from the Department of Justice and the Treasury Department. During 1998, total equitable sharing payments by the Department of Justice increased by 8.5% from \$22.6 million to \$196 million. On the other hand, Treasury equitable sharing payment began 1994, which reflect total payment of \$53.8 million. By the year 1998, Treasury equitable sharing payment totaled \$73 million reflecting a 1.3% increase (Ehlers, 1999). For the period of 2015, the Institute for Justice conducted the same study of equitable sharing payments by Department of Justice and Treasury for the years 2000 – 2013. Resulting in the average equitable sharing payment per year by the Department of Justice at \$338 million and \$81 million equitable payment by Treasury (Institute for Justice, 2015). Ehlers (1999) and the Institute for Justice (2015), reflect the mass amount of funding flowing through the equitable sharing program, absent the state civil asset forfeiture case proceeds, would be a monetary incentive for policing. Another illustration of the monetary motivator of civil asset forfeiture is revealed by law enforcement agencies using new handheld technology called electronic recovery and access data were law enforcement would siphon funds directly from driver's pre-paid cards. The electronic recovery and access data has been utilized by the Oklahoma Highway Patrol has been called into question. As reported by the Oklahoma Watch, the electronic recovery and access data is being called the new front in civil forfeiture, whereby 83 Walmart gift cards were seized due to the fact the funds which were loaded onto the card was drug funds. Oklahoma has not reformed their civil asset forfeiture law, Okla. Stat. tit. 63, § 2-503(G). Under Oklahoma current civil forfeiture law there is no restriction on the forfeiture proceeds, the arresting agency

keeps 100% of the funds, and the burden of proof is by the preponderance of the evidence. Based on the actions of the Oklahoma Highway Patrol and the use of the electronic recovery and access data suggests' a clear abuse and greed relating to civil asset forfeiture. For fiscal year 2016, as reported by the Department of Justice, the state of Oklahoma received a combined equitable sharing payment of cash and sale proceeds of \$2 million of which \$1 million went to highway patrol (DOJ, 2016). Another example, of the monetary motivator of civil asset forfeiture is when than United States Attorney General, Eric Holder, opted to suspend the equitable sharing program and defer the equitable payments. As a result, state and local law enforcement groups, such as the International Association of Chiefs of Police, the National District Attorneys Association, and the National Sheriff's Department were outraged.

The proceeds from civil asset forfeiture and the equitable sharing program have been linked to supplanting the budgetary needs of law enforcement agencies. According to Rothschild and Block (2016) the study of (Baicker & Jacobson 2007), concluded that law enforcement budgets are cut by the amount of forfeiture proceeds received in the previous fiscal year. Therefore, local enforcement agencies seek other means to generate revenue, through the federal equitable sharing program (Rothschild and Block, 2007). Lastly, if the monetary incentive wasn't the motivating factor, the restriction placed on law enforcement agencies by individual state regulators would not be bypassed. State and local law enforcement agencies would be upholding state civil forfeiture laws and not requesting the federal government to adopt their case.

Receiving 80% of the proceeds from the equitable sharing program, some critics have suggested, it opened the door up for law enforcement agencies to abuse civil asset forfeiture. The abuse stems from targeting innocence property owner to focusing on specific crime which will

produce the most lucrative monetary return and creating dependence for fulfilling budgetary necessity (Worrall, 2001). In the case of California billionaire, Donald Scott being shot to death during a raid of his 200-acre ranch by the joint task force of Los Angeles County Sheriff's Department, Drug Enforcement Administration, Border Patrol, National Guard and Park Service. These law enforcement agencies noted they were acting upon a tip from an informant, that Mr. Scott was growing marijuana on his ranch. The outcome of the Donald Scott investigation resulted in a criminal conspiracy stemming from stealing his ranch, cash or other assets found to be in his possession (Bradbury, 1997). Concerning 2011 and 2012, Sunset, Florida, police reported using a reverse sting, posing as drug dealers to sale drugs at a cheaper price. After the sale was finalized, police would seize buyers' money and property. Florida police made over \$5.8 million in forfeiture proceeds (Sibilla, 2013). Case by case, civil asset forfeiture, highlights the abuse of government power towards citizens.

As pointed out by the Department of Justice, there is only two ways to participate in the equitable sharing program; joint investigation or adoption. Joint investigation is where the state and/or local law enforcement work with the federal agency to enforce the federal criminal laws, such as a task force. Whereby, adoption is when an asset is exclusively seized by the state or local law enforcement agency, which in turn, a request is made from one of the federal seizing agencies, Federal Bureau of Investigations (FBI), Drug Enforcement Administrations (DEA), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the United States Postal Inspection Services (USPIS) to adopt the property (contraband or conveyances) and proceed with federal forfeiture. According to the Department of Justice, not every case is adopted by the federal government; only cases were the equity in the property aggregate surpasses a minimum dollar value (U.S. DOJ, 2009).

Table A1

Minimum Adoption Thresholds from the Department of Justice Equitable Sharing Guide

Property Category	Type of Property	Threshold Amount
Conveyances	Vehicles	\$ 5,000
	Vessels	\$10,000
	Aircraft	\$10,000
Real Property	Land and Improvements	\$20,000 or 20% of the appraised value, whichever is greater
All Other Property	Currency, bank accounts, monetary instruments, jewelry, etc.	\$2,000
	Firearms	May be forfeited regardless of value

Note. The U.S Department of Justice, Criminal Division, Guide to Equitable Sharing

For State and Local Law Enforcement Agencies. 09, p. 7.

Discussion

The ambiguity, federal equitable sharing, will not be an easy fix, according to Snead (2016) allowing this omission to be inexistence will weaken the reform state civil asset forfeiture law and go against federalism, government transparency, and accountability. Since the year 2000, equitable sharing payments made to state and local law enforcement agencies has been more than \$5 billion. The recipient state or local law enforcement agency receiving these funds are not subject to any restrictions on how these funds are spent (Snead, 2017).

According to Tennessee Watch between 2014 and 2016 Tennessee's Department of Safety spent \$112,614 of the forfeiture proceeds received through the equitable sharing payment on catering, banquet tickets, and retail food purchases, which under the equitable sharing program is a violation. Clearly, the actions of the Tennessee Department of Safety highlight the misuse of equitable sharing payments. The equitable sharing program explicitly prohibits equitable funds to be spent on anything other than law enforcement expenses such as; policing training, officer payroll, hiring officer to replace the officers assigned to the task force and the likes (Adams, 2017).

The problem is state and local law enforcement agencies through the federal equitable sharing program circumvent state civil asset forfeiture laws. The Department of Justice (12, June 2017) issued an equitable sharing wire letter acknowledging that some states, Arizona, California, Colorado, District of Columbia, Maryland, Nebraska, New Mexico, and Ohio, have placed restrictions on the forfeiture proceeds. Specifying forfeiture proceeds shall be deposited into individual state's general fund, omitting the arresting agency from receiving any funds. States imposed restrictions are in violation of the equitable program and those states will no longer be able to participate in the program. Under the equitable sharing program, forfeiture proceeds are to go directly to the arresting agency. The arresting agency is responsible for the compliance of their individual state forfeiture laws (Department of Justice, Equitable Sharing, 2017).

International / Transnational Policy

The practice of civil and criminal asset forfeiture not only applies domestically, but also internationally. Nefarious criminal activities that transcend national jurisdictions, such as money laundering, narcotics trafficking, political corruption, and terrorism to name a few, creates economic concerns for neighboring states (Cassella, S., 2003). When dealing with asset forfeiture relating to transnational crime, the issues arise from the origin of the crime, the location of the criminal and/or the asset(s) of the criminal. To cope with the issues of transnational crimes, there are treaties, agreements, and laws in place. Specifically, the Mutual Legal Assistance Treaties whereby the Department of Justice and foreign governments can exchange information as it pertains to transnational crimes. Also, under the provision of a Mutual Legal Assistance Agreement and pursuant to 18 § U.S.C. § 981(i), 21 U.S.C. § 881(e)(1)(E), and 31 U.S.C. § 9703(h)(2), federal law enforcement agencies can encourage foreign governments to

engage in joint investigation, whereby sharing the proceeds of forfeited assets. According to the Department of Justice, between the periods of 1989 through 2011, the Department of Justice has administered through the international asset sharing program a total of \$235,925,145 in forfeiture proceeds between 38 foreign governments, (Bureau of International Narcotics and Law Enforcement Affairs, 2012).

In the wake of the September 9, 2001 terroristic attack on the World Trade Center and the Pentagon, Congress enacted the Patriot Act of 2001. The Patriot Act provided avenues for the exchange of intelligences information, such as access to medical and financial records, lifted restrictions on surveillance communications, and produced financial institution compliance between foreign governments. Under the Patriot Act the practice of civil asset forfeiture expanded law enforcement's ability to pursue nefarious criminal activities, such as financial counterfeiting, smuggling and money laundering schemes that funded terrorists beyond the United States (History, 2001). The United States has the power to request that a foreign government retain the property and funds of the criminal through a forfeiture order. The forfeiture order prevents the criminal from utilizing property or bank accounts to hire an attorney (Cassella, S., 2003). The agency created to assistance in facilitating financial crimes was the Financial Action Task Force. The Financial Action Task Force is the international standard-setting body and is made up of 37 members including the European Commission and the Gulf Cooperation Council (Investopedia, n.d.).

Recommendation / Conclusion

The data in current literature on equitable sharing program is skewed based on the lack of individual state transparency reporting. Without transparency reporting of individual state civil asset forfeiture, the studies that exist will be empirical. To effectively understand the total

amount of equitable sharing proceeds that influence law enforcement agencies misguided behavior coupled with the states individual civil asset forfeiture proceeds, I suggest a global database and global general fund. Depositing forfeiture proceeds into the general fund to be utilized for law enforcement and non-law enforcement agencies budgets, would remove the profit incentive of state and local law enforcement agency and eliminated circumvention of state civil asset forfeiture regulations. Through the general fund, state, and local law enforcement agencies budgets and supplementing budgets of non-law enforcement agencies, such as public schools, would be derived. The civil asset forfeiture database information would be collected and maintain by an independent company that will eliminate law enforcement conflicts of interest and impropriety. In addition, the requirement that all law enforcement agencies (federal, state, & local) submit total forfeiture cases and the outcome of said cases monthly to the independent company. Separating the arresting law enforcement agencies from collecting, maintaining, and the distribution of forfeiture proceeds, omits the opportunity for unethical behavior and refocus on serve and protect, not seizing valuable assets. Congress could rewrite the federal equitable sharing program to implement the global civil asset forfeiture database and global fund account. For instance, when Congress amended the Comprehensive Drug Abuse Prevention and Control Act too include the provision of civil asset forfeiture that allowed arresting agency to retain the forfeiture proceeds. In addition, any individual state failure to comply with the required civil asset forfeiture transparency would be accessed a penalty and possibility of probation up to suspension from the participation in equitable sharing program.

In conclusion, the state civil asset forfeiture practice will continue to be a nightmare for citizens because the ease of law enforcement agencies to abuse and manipulate the practice with warrantless seizure and forfeiture of property based solely on probable cause. Furthermore, the

Civil Asset Forfeiture Reform has failed to stop law enforcement agency abusive behavior and the circumvention of state regulation restrictions of civil asset forfeiture. The current state civil asset forfeiture laws would suggest needed revamping to curtail law enforcement misguided behavior and restore fairness to citizens and the judicial systems. Without revamping the current laws, I would support the abolishment of the state civil asset forfeiture practice. However, utilizing criminal asset forfeiture would better assist the intended goal of the war on drugs, thus depriving criminals of their ill-gotten gains and deterring nefarious activities.

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