



Testimony of Kathy Griesmyer
HB 202: Civil Asset Forfeiture Reform
Before Senate Judiciary and Rules Committee
March 13, 2017

The ACLU of Idaho stands before you today in support of HB 202, which aims to bring long over-due transparency to Idaho's shadowed civil asset forfeiture policies.

As you may know, civil asset forfeiture is the ability granted to local, state, and federal law enforcement departments to seize property believed to be connected to criminal activity including an individual's cash on hand, car, home or other property located at the scene of the suspected crime. This over-abused action surged during the War on Drugs when Congress passed legislation to authorize the forfeiture of proceeds from drug transactions¹ and then amended the law to permit the exclusive earmarking of forfeited assets for law enforcement².

The civil forfeiture laws were supposed to help fight the War on Drugs, by making sure that crime wouldn't pay. But this broken system also sweeps innocent property owners into its net, seizing money based on a premise of drug activity with no hard evidence and no requirement to prove anything to a judge. It's no surprise that asset forfeiture practices disproportionately impact low-income, hard-working African-American or Hispanic people who the police decide look suspicious and who have little means to challenge their plight.

HB 202 is merely a starting point to address the various concerns embedded in our current civil asset forfeiture policies in Idaho. The limitations on abuse included in this bill – that presence of cash is insufficient probable cause and the opportunity for seized property to be returned to its owner if it's reasonably necessary for the owner's employment – are critical first steps in implementing appropriate safeguards on how law enforcement and prosecutors use our civil asset forfeiture laws.

However, the most important component of HB 202 is the newly mandated annual reporting requirements. These requirements to collect data on forfeiture rates, demonstrate when property is connected to a criminal conviction and to show where the money is going will ensure increased public transparency in this policing practice. At minimum, it will shed light on how this policy is currently being used and better identify patterns of abuse, targeted policing, and needs for additional protections for property owners.

While the ACLU of Idaho ultimately believes the practice of civil asset forfeiture should be abandoned, especially given that Idaho already has criminal asset forfeiture incorporated into statute, we also would encourage the legislature to support additional meaningful reforms that would better incorporate the principles of due process as these reforms are clearly needed. In a 2015 Institute for Justice report titled "*Policing for Profit*" the state of Idaho earned a D- for its civil forfeiture laws due to its low bar to seize and forfeit an individual's property, that no criminal conviction is required to formally seize an individual's property, and that there are poor protections for innocent third-party property owners. To better ensure that Idaho property owners will have increased due process protections as Idaho continues its civil asset forfeiture policies, the ACLU of Idaho recommends the following reforms:

¹ Psychotropic Substances Act of 1978 (coded as amended in various sections of 21 U.S.C.).

² Brant Hadaway, *Executive Privateers: A Discussion on Why the Civil Asset Forfeiture Reform Act Will Not Significantly Reform the Practice of Forfeiture*, 55 U. Miami L. Rev. 81, 93 (2000).



Requirement of a Criminal Conviction

In more than 80 percent³ of asset forfeiture cases, the owner of the property is never charged with a crime, yet government officials can and usually do keep the seized property. The best solution is to require a conviction before the government can take property, as is the rule in North Carolina, Minnesota and New Mexico. This would allow law enforcement agencies to seize criminal profits legitimately, while protecting innocent property owners from having to spend months or years in court fighting to reclaim their money.

Increase Due Process Protections

In most states, the standard of proof⁴ in civil asset forfeiture laws is lower than the standard required to prove that a person has committed a crime. In Idaho, law enforcement agents need to only tie the property to a crime by a preponderance of the evidence—a low bar to forfeit. Instead, lawmakers should increase the burden of proof to beyond a reasonable doubt to avoid punishing innocent property owners and to prove that there is clear evidence that property seized was connected to criminal wrongdoing.

Redistribute Funds Away from Law Enforcement

What's most troubling about Idaho's civil asset forfeiture law is that law enforcement in the state reaps all the rewards of civil forfeitures - meaning the agencies keep 100 percent of all funds and currently face no requirement to collect or report data on forfeiture use and proceeds. According to the Department of Justice, in FY14, local and state police in Idaho seized property totaling almost \$800,000, all of which was funneled back into the budgets of law enforcement agencies⁵. Rather than giving police and prosecutors a direct financial incentive to increase forfeitures, Idaho should redirect that money away from law enforcement budgets and put that money into a general, neutral fund, perhaps for education or drug treatment.

End Equitable Sharing

Under the guise of "equitable sharing", local law enforcement can pass on seized assets to the federal government, or they can seize them in conjunction with federal officers. The property then becomes subject to federal civil forfeiture law—not state law. Under federal law, as much as 80 percent of the proceeds eventually goes to state law enforcement and in doing so, the equitable sharing loophole provides a way for local law enforcement to profit from forfeitures that may have originally been off limits under state law. According to the Institute for Justice, Idaho is the 8th best state in the country for federal forfeiture, with over \$5 million in Department of Justice equitable sharing proceeds from 2000 to 2013, averaging nearly \$384,000 per calendar year. The solution is simple – Idaho must end its contract with the federal government and repeal Section 34-2744B which authorizes equitable sharing in Idaho.

The political climate at the federal and state levels is ripe for reform and members on both sides of the aisle have joined together to introduce civil asset forfeiture reform legislation, just as we have seen in Idaho. While HB 202 begins the conversation on much needed reforms, we encourage your yes vote on this bill and ask you to consider the additional reforms needed to end policing for profit in Idaho.

³ See *Presumed Guilty: The Law's Victims in the War on Drugs* <http://www.fear.org/pittpres.html>

⁴ See *Policing for Profit: The Abuse of Civil Asset Forfeiture* pages 16-18

⁵ See DOJ Asset Forfeiture Program Report <https://www.justice.gov/afp/reports-congress/fy2014-idaho>