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A Research Guide to Civil Asset Forfeiture

Amy L. Marcina
Georgia State University College of Law

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Research Guides

A Research Guide to Civil Asset Forfeiture

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Introduction

Abstract

Asset forfeiture is the involuntary surrender of one's property to the government without compensation either as a consequence of criminal conviction or in the event of an *in rem* proceeding against the property itself, where the owner/possessor is merely a third party to the proceedings, also known as Civil Asset Forfeiture. This Research Guide focuses on Civil Asset Forfeiture and it's use as a revenue source for funding other law enforcment activities.

Related Terms:

Equitable Sharing: State and local law enforcement agencies can transfer the assets they seize - for a percentage of their value - to federal law enforcement agencies for federal forfeiture proceedings, when federal law applies. This reciprocal arrangement is common when many law enforcement agencies work together on wide-reaching investigations.

Profit motive: Because law enforcement agencies are permitted to use or sell the property they seize, they can use civil asset forfeiture to increase revenues and supplement budgets.

Standard of proof: Jurisdictions vary, but the most common standard the government must meet (under the federal CAFRA statute and in most states) to claim property in a civil asset forfeiture is "a preponderance of the evidence." Upon that showing, "innocent owners" must demonstrate that they were not involved in or aware of their property's crimes.

About the Author

Amy L. Macrina is a 3rd-year law student at Georgia State University College of Law. Upon completing the J.D. requirements in December, 2010, Amy plans to pursue a career in public interest litigation in the Atlanta, Georgia area.

Scope of Topic

This Research Guide will not address, except in general comparison, the use of criminal asset forfeiture as a punitive measure. And, the surrender of property *with compensation* is not properly understood as asset forfeiture in this context. Because litigation and legislative reforms are ongoing, the information in this guide does not represent a comprehensive look at the law across all jurisdictions. This Guide will focus on primary and secondary sources in federal law and also has information on interest groups and other materials relevant to state and international research.

Sources:

Case law: Asset Forfeiture has its roots in English common law, and case law is an indispensable component of thorough research on this topic. This guide only briefs three illustrative cases; however, each of the referenced statutes, annotated sources, and online resources also cite to relevant cases. Because many agencies make use of civil asset forfeiture as an enforcement tool and statutes throughout the U.S. Code provide for asset forefeiture, narrowing the scope of research (by browsing the other sources of information on this guide) is recommended before beginning to search case law.

Statutes: The materials in this guide track the statutory and regulatory law as it has developed following CAFRA, the Civil Asset Forfeiture Reform Act. CAFRA is the major federal legislation governing civil forfeiture since 2000.

Secondary Sources: Civil Asset Forfeiture is a highly contentious practice of law enforcement which has gathered the attention of some leading commentators and has lead to often-controversial litigation, investigations, and legislative activism. As a result, literature abounds on the pros and cons of the practice, in the form of law review

articles, books, and reports. Legal encyclopedias and the American Law Reports also have entries, included here.

Electronic Resources: Targeted searches with the common legal research tools such as LexisNexis and Westlaw return a wealth of information on Civil Asset Forfeiture, given the large body of caselaw, statutes, and regulations covering the topic. If general information or less persuasive authority will do, there are websites tailored to this topic, although the sites are often sponsored by a group solidly on one side of the debate surrounding the propriety of Civil Asset Forfeiture. All of the information assembled in this guide was accessed through Lexis, West, and Google searches.

Interest Groups: Law enforcement agencies, grassroots organizations, non-profit public interest groups, federal administrative departments, and political watchdogs all have a role in the Civil Asset Forfeiture debate. In many cases, their efforts for or against the practice are highly organized and their incentives entrenched. A researcher or practitioner who intends to stay abreast of the law in this area must remain aware of the interests driving development of the law.

Intended Use

This Research Guide should be used by practitioners and researchers looking for resources/information on Civil Asset Forfeiture. It is not intended to convey any legal advice or policy preference, nor is it an exhaustive listing of sources. The author has attempted to gather relevant primary authorities, commentaries, and advocates' materials to assist researchers with the essential elements of the topic. This is an evolving area of law; the annotations that follow are only a starting-point for research. For further assitance, please contact a law librarian.

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Primary Sources

Statutes

The Civil Asset Forfeiture Reform Act of 2000 was passed as Public Law 106-185. It raised the government's standard of proof from mere 'probable cause' to 'a preponderance of the evidence' in civil forfeiture cases, and shifted the initial burden from the property owner to the government. It was codified in the following sections of the U.S. Code.

- 18 U.S.C. § 981. Civil Forfeiture
  - Defines what forms of property are subject to forfeiture;
  - Defines 'proceeds' of unlawful activity;
  - Provides for procedures governing forfeiture, including: who may seize, warrant requirements/exceptions, equitable sharing, etc.
- 18 U.S.C. § 983. General Rules for Civil Forfeiture Proceedings
  - Contains provisions for notice, for filing a claim after seizure of property in a nonjudicial civil forfeiture proceeding, and the Government's responsibility to file a complaint for forfeiture following an owner's claim;
  - Also provides for representation of property owner by counsel, Government's burden of proof to show the property is subject to forfeiture, 'innocent owner defense,' and procedure for the release of seized property, etc.
- 18 U.S.C. § 984. Civil Forfeiture of Fungible Property
  - Applies to cash, monetary instruments in bearer form, deposited funds, and precious metals
- 18 U.S.C. § 985. Civil Forfeiture of Real Property
  - Provides that all forfeitures involving interests in real property shall be judicial (not administrative) forfeitures
  - Does not apply to the proceeds from the sale of real property
  - Owners/occupants shall not be evicted pending the forfeiture action.

U.S. Treasury Department's Forfeiture Fund

- 31 U.S.C. § 9703
  - This statute creating the U.S. Treasury Department's Forfeiture Fund also provides for equitable sharing with state and local agencies, and lists the functions for which seized assets may be used by the Treasury Secretary.

U.S. Department of Justice's Assets Forfeiture Fund

- 28 U.S.C. § 524
  - This statute creating the U.S. Department of Justice's Assets Forfeiture Fund also provides for equitable sharing with state and local agencies, and lists the functions for which seized assets may be used by the Attorney General.

Many federal statutes provide for or govern the use of civil asset forfeiture:

- 16 U.S.C. § 1860. Civil forfeitures, Fishery Conservation and Management
  - Fishing vessels, cargo, gear, and fish shall be subject to forfeiture;
  - U.S. District courts have jurisdiction;
  - If judgment is entered for the United States, the Attorney General can seize any property declared forfeited to the U.S. that has not already been seized;
  - Rebuttable presumption that "all fish found on board a fishing vessel which is seized in connection with an act prohibited by 16 U.S.C. 1857 were taken or retained in violation of this Act;"
- 18 U.S.C. § 2254. Civil forfeiture provisions related to sexual exploitation and other abuse of children
  - Incorporates the provisions for criminal forfeiture of property in civil cases involving visual descriptions of sexual exploitation of children;
- 18 U.S.C. Chapter 96. Racketeer Influenced and Corrupt Organizations (RICO)
  - § 1964. Civil Remedies: provides that the U.S. District Court's have jurisdiction to "order any person to divest himself of any interest, direct or indirect, in any enterprise" for violations of this Act
- 21 U.S.C. Chapter 13. The Controlled Substances Act
  - § 881. Forfeitures: lists the forms of property subject to forfeiture, including raw materials, containers, conveyances, books/records/research/formulas, real property, controlled substances, chemicals, equipment, machines, paraphernalia, firearms, plants, etc.
    - Seized property to be in the costody of the Attorney General and transferred/retained/disposed at his discretion;
    - Proceeds from the sale of seized property may be used to pay expenses of the forfeiture or rewards for information;
    - Includes provisions for equitable sharing;
- 30 U.S.C. § 1466. Civil forfeitures, Deep Seabed Hard Mineral Resources
  - Any vessel, cargo, gear and any hard mineral resource shall be subject to forfeiture;
  - U.S. District courts have jurisdiction;
  - If judgment is entered for the United States, the Attorney General can seize any property declared forfeited to the U.S. that has not already been seized;
  - Rebuttable presumption that "all hard mineral resources found on board a vessel which is seized in connection with an act prohibited by 30 U.S.C. 1461 were recovered, processed, or retained in violation of this Act."

Case law

A LexisNexis or Westlaw search will turn up hundreds of cases referencing civil asset forfeiture. In addition, each of the annotations listed in this research guide - law review articles, A.L.R. and legal encyclopedia entries, and web-based sources - link to cases on point for the particular topic covered by the annotation. This section is not intended as a comprehensive compilation. The cases listed here were chosen for the variety of their fact-patterns; they are meant to illustrate the kinds of property that can be subject to forfeiture and the ways property owners try to defend against it.

(Civil Asset Forfeiture cases are brought against the property, not against its owner; actions by the property owner to recover seized property are brought against the government.)

United States v. One 1990 Beechcraft, 619 F.3d 1275 (11th Cir. 2010)

- In this case, an airplane was subject to civil forfeiture after being used to facilitate the trafficking of a controlled substance. The title holder raised an 'innocent owner' defense, on grounds that he did not know about the unlawful activity the plane was used for.
- The 11th Circuit affirmed a District Court's ruling that the title holder did not have statutory standing under CAFRA to raise the 'innocent owner' defense. The proper person would have been the lessee, since the plane was under a lease at the time of the forfeiture.
- The court held that, although the title holder exercised some dominion and control over the airplane, the owner/manager of the lessee company was the true 'responsible party,' and therefore the title holder was not permitted to raise the 'innocent owner' defense and the forfeiture was upheld.

von Hofe v. United States, 492 F.3d 175 (2nd Cir. 2007)

- Acting on a tip, investigators spent 10+ months looking for evidence of marijuana cultivation at the von Hofe's home; they eventually discovered sufficient evidence to execute a warrant, over sixty marijuana plants were found and Mr. and Mrs. von Hofe were faced with several state criminal charges, to which they enterd an *Alford* plea (maintaining innocence but accepting punishment).
  - The federal government opted not to prosecute Mr. and Mrs. von Hofe criminally, but began civil asset forfeiture proceedings against their home; the von Hofes owned their home jointly, without a mortgage.
- Under CAFRA, the government has the burden to present facts showing a substantial connection between the property and the offense; upon that showing, an owner may raise an 'innocent owner defense.'
  - Here, Mr. von Hofe raised no defense; Mrs. von Hofe claimed she was not aware of the activity leading to the forfeiture.

Before a jury, Mrs. von Hofe insisted she was 'too busy' as the main breadwinner to monitor her husband's activities and that she could not smell or see the marijuana plants in their basement; the government did not challenge her lack of involvement in the cultivation, but challenged her lack of knowledge.

- A jury rejected Mrs. von Hofe's innocent owner defense; the von Hofe's then offered the government $248,000 in judgment, to save their home from forfeiture, which was rejected.

- The district court considered whether the forfeiture of their home was an 'excessive fine' under the 8th Amendment, and held that it was not.
- On appeal, the 2nd Circuit held that forfeiture of Mr. von Hofe's undivided one-half interest was not excessive, because his activity was willful, lengthy, and extensive; but, forfeiture of Mrs. von Hofe's interest would equal a fine of $124,000. The 2nd Circuit found that excessive, given her minimal involvement in any criminal activity.
  - Just because Mrs. von Hofe did nothing to stop her husband's marijuana cultivation does not make her culpable for it, since he did not need her permission as a joint tenant of the property.
- Held: forfeiture of Mr. von Hofe's interest will sever the joint tenancy and create a tenancy in common between the Government and Mrs. von Hofe; the appropriate partition of the property will be decided on remand by the district court.

United States v. 144,774 Pounds of Blue King Crab, 410 F.3d 1131 (9th Cir. 2005)

- Under the Lacey Act, King crab is subject to forfeiture when taken in violation of Russian fishing regulations; claimant Deep Sea Fisheries was 'crabbing off the books' and was detained by Customs officials;
- The United States brought a forfeiture action against the crab catch, arguing that under CAFRA, 18 U.S.C. § 983(d)(4), the crab was "contraband or other property that it is illegal to possess;"
  - Deep Sea Fisheries responded that crab is neither contraband nor inherently illegal, so the innocent owner defense should apply;
- The District Court held that "contraband" under CAFRA includes both goods inherently illegal to possess and legal goods exported/imported illegally;
- The 9th Circuit rejected the claimant's reading as essentially equating "contraband" with 'illegal to possess', which would have made the statutory language superfluous.
  - It held that 'illegal to possess' includes property that has ***become*** illegal to possess "because of extrinsic circumstances;" here, those circumstances include violation of the Lacey Act.
- Ruling: Deep Sea may not raise an innocent owner defense if the government can establish that the crab was taken in violation of Russian law, making it illegal to possess under the Lacey Act.
  - Remember: for civil asset forfeiture, the proceedings are against the property itself!

Administrative law

Code of Federal Regulations (CFR) - The CFR is the official codification of agency-made law in the United States. Administrative agencies of the executive branch are charged with rule-making authority and the interpretation of statutes in the areas of their expertise. These rules and interpretations are printed annually in the CFR. Title 28 of the CFR covers "Judicial Administration." Chapter 1 is comprised of regulations from the Department of Justice. Part 9 contains "REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF CIVIL AND CRIMINAL FORFEITURES."

- 28 C.F.R. 9.4. Petitions in judicial forfeiture cases
  - This section gives the procedural requirements for property owners to file a petition after their property has been seized;
    - Requirements include notice, contents of petition, who may file, and where to address the petition;
  - This section also tells a petitioner how forfeiture proceedings are conducted, from investigation to ruling to review and restoration of property.
- 28 C.F.R. 9.5. Criteria governing administrative and judicial remission and mitigation
  - The section contains the criteria for granting a remission of property: valid ownership interest and 'innocence;'
    - Burden is on the petitioner to establish these criteria;
  - Where a petitioner does not meet the criteria for remission, but the interests of justice allow, an owner who was not involved in the underlying offense leading to forfeiture may be granted mitigation;
    - Or, an owner meeting the remission requirements may nonetheless be subject to mitigation, where 'complete relief is not warranted.'
- 28 C.F.R. 9.6. Special rules for specific petitioners
  - General creditors, rival claimaints, lessors, straw owners, and judgment creditors are subject to special rules in civil asset forfeiture proceedings, regarding order of precedence, eligibility for remission/mitigation, and ability to file a petition.
- 28 C.F.R. 9.7. Terms and conditions of remission and mitigation
  - Terms and conditions applicable to owners are distinguished from those applicable to lienholders;

- 28 C.F.R. 9.8. Provisions applicable to victims
  - Persons who are victims of the underlying offense leading to forfeiture of the property, but who are not owners of the subject property, can file a petition for remission of the forfeiture of that property;
    - The victim must show pecuniary loss directly resulting from the underlying offense leading to forfeiture and not from lawful acts committed in the course of some criminal offense;
    - The victim must not have participated in the offense or have been already compensated for the loss;
    - Compensation is limited to fair market value of the victim's loss when it occurred; if the victim is later compensated from any other source, the Asset Forfeiture Fund must be reimbursed.

  Title 21 of the CFR covers "Food and Drugs," and Chapter 2 of that title contains regulations from the DEA, Department of Justice. Part 1316 Subpart E is "SEIZURE, FORFEITURE, AND DISPOSITION OF PROPERTY."

- 21 C.F.R. 1316.77. Administrative Forfeiture
  - The section outlines the administrative procedures to be followed by the DEA and FBI in carrying out forfeitures;
    - It specifies the agents to make the initial forfeiture declaration and how/where the seized property is to be retained;

- 21 C.F.R. 1316.78. Judicial Forfeiture
  - The DEA must deal with a U.S. Attorney and apply to a U.S. District Court to retain property for use by the DEA when the property value is above a certain jurisdictional limit;

- 21 C.F.R. 1316.79 Petitions for remission or mitigation of forfeiture
  - Petitions must be filed with DEA or FBI, whichever agency seized the property under § 1316.77, or with the Attorney General if a judicial forfeiture occurred under § 1316.78;
  - Petitions must include the property's description, proof of ownership interest, facts and circumstances supporting remission/mitigation;
  - Petitioner must show he was not aware of the seizure before the declaration of forfeiture.

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Secondary Sources

Annotated Sources

American Law Reports (ALR) is a valuable resource for preliminary research. It offers comprehensive analysis of specific legal issues and annotations to case law, statutes, regulations, and reference materials from all jurisdictions. Articles are written by attorneys to provide objective information for researchers.

- Validity, Construction, and Application of Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Barbara J. Van Arsdale, J.D., 195 A.L.R. Fed. 349, (2010); (superseded by 35 A.L.R. Fed. 2d 143)
  - This citation tracks the changes to civil asset forfeiture that resulted from passage of CAFRA;
    - the superseding citation (35 A.L.R. Fed. 2d 143) addresses civil forfeitures litigated simultaneously with criminal charges arising from the same conduct.

American Jurisprudence (Am.Jur.) is a legal encyclopedia. It has short summaries of legal topics, listed alphabetically. The following citations are Am.Jur. entries that address asset forfeiture (civil and criminal).

- 36 Am. Jur. 2d, Forfeitures and Penalties § 1
  - Defines "forfeiture" as "the divestiture of property without compensation, in consequence of a default or an offense, which imposes a loss by the taking away of some pre-existing valid right without compensation."
  - Distinguishes civil forfeiture, a proceeding against the property itself, from criminal forfeiture, which is *in personam* against an actual person.

- 36 Am. Jur. 2d, Forfeitures and Penalties § 8
  - Forfeitures are not favored in the law; statutes authorizing the forfeiture of property are strictly construed;
    - they will not be construed to include anything beyond their letter, even if within their spirit;
    - but, they will not be so construed as to defeat a plain and proper legislative intent;
    - a court is obligated to construe the statute to avoid an absured result, if another interpretation is more consistent with the statute's purpose;

- 36 Am. Jur. 2d, Forfeitures and Penalties § 9
  - Whether a forfeiture is civil or criminal is determined by statute;

- 36 Am. Jur. 2d, Forfeitures and Penalties § 23
  - Civil forfeiture is *in rem*, against the property itself; the culpability of the owner does not matter, and seizing an innocent owner's property does not violate the 5th Amendment;
  - An innocent owner's remedy is a petition for remission;
- 36 Am. Jur. 2d, Forfeitures and Penalties § 43
  - The burden rests on the person urging forfeiture, to show facts warranting it; BUT
    - "in these proceedings forfeiture is the rule, and release therefrom the exception, so that the burden of proof is upon the claimant of the property seized to establish his right to it under the statutory conditions."
  - evidence obtained by a *wrongful* search or seizure, when properly objected to, is excluded when the property is not by its nature illegal or contraband.

Corpus Juris Secundum (C.J.S.) is also an American legal encyclopedia, with both state and federal topics, listed alphabetically.

- 28 C.J.S. Drugs and Narcotics § 248. Defenses; innocent owners - Federal statutes
  - This entry focuses on the "innocent owner" defense to civil asset forfeitures, in the context of the War on Drugs;
  - Drug cartels and organized crime are featured targets of law enforcement when defending the use of civil asset forfeiture.

Law Review Articles

David Benjamin Ross, Civil Forfeiture: A Fiction that Offends Due Process, 13 Regent U.L. Rev. 259 (2000)

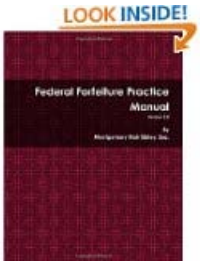
This article traces the origins of civil asset forfeiture from antiquity, to English common law, through early American admiralty law, to statutes currently in force;

- The author contends that civil forfeitures are used as a means to avoid the individual protections of the Due Process Clause;
  - specifically, the opportunity of a property owner to be heard in a judicial forum is eliminated in civil forfeiture proceedings, in violation of the 5th and 14th Amendments;
- Conflicts of interest inherent to the civil forfeiture "engine" are analyzed
- The author supports some aspects of the CAFRA legislation which was enacted contemporanously with this article; however, he asserts that CAFRA does not go far enough to eliminate profit motives and does not address the problem of State's improper enforcement of their civil asset forfeiture laws.

Eric Moores, Note: Reforming the Civil Asset Forfeiture Reform Act, 51 Ariz. L. Rev. 777 (2009)

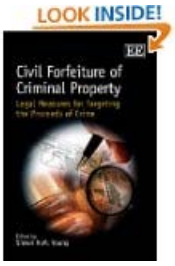
- This note proposes that the practice of civil asset forfeiture under CAFRA has evolved from a means to enforce law and protect society into a largely revenue-generating operation;
  - it catalogues key aspects of CAFRA, including shifting the burden of proof from the property owner (under former legislation) to the government, provisions for an 'innocent owner' defense, and court-appointed legal representation;
  - the author calls for further reforms to combat the potential for perverse incentives under CAFRA, when law enforcement has both authority to seize property (on probable cause) and rights to use the property to fund their activities;
  - public opinion polls and data show that asset forfeitures have increased under CAFRA, while respect and confidence toward police have declined;
  - the author argues that CAFRA does not provide sufficient oversight of law enforcement's asset forfeiture practices, including how proceeds are used and the extent to which asset forfeiture is used to supplement budget shortfalls;
- Various constitutional arguments are presented in favor of reforming CAFRA:
  - the Appropriations Clause, which gives Congress power to appropriate funds;
  - Due Process;
  - the Fifth Amendment;
- Reform proposals include:
  - requiring deposit of forfeiture proceeds in the General Treasury Fund;
  - Increase the government's burden of proof ;
  - abolish equitable sharing practices;
  - Prohibit 'voluntary surrender' of owners' rights by contracts/waivers without due process.

Books



Federal Forfeiture Practice Manual by: Montgomery Blair Sibley; published by: Lulu.com (2009); http://www.amazon.com/Federal-Forfeiture-Practice-Manual-Montgomery/dp/0557220025/ref=sr_1_1?s=books&ie=UTF8&qid=1288903189&sr=1-1

- The book is inteded to assist attorneys practicing in the area of asset forfeiture, by walking them through a case, from the initial seizure of property by state or federal law enforcement though all of the legal hurdles a client will face in getting their property back. It includes advice on preserving the value of the property, avoiding missteps by the client, navigating administrative remedies, jury instructions, and more.
- The author is an experienced criminal and civil litigator with expertise in asset forfeiture. His practice manual includes common federal practice forms.



Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime by: Simon N. M. Young; published by: Edward Elgar Publishing (2009); http://www.amazon.com/Civil-Forfeiture-Criminal-Property-Targeting/dp/1847208266/ref=sr_1_3?s=books&ie=UTF8&qid=1288903399&sr=1-3

- This book will be of interest to researchers looking for commentary on international uses of civil asset forfeiture. It is a collection of essays, written by practitioners from several foreign jurisdictions.
- The common justifications for using civil asset forfeiture - combatting drug traffickers and organized crime - no know boundaries; this book offers a comparative view of the legislative reactions to those issues from practitioners outside the United States.

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Interest Groups & Govt Agencies

Institute for Justice

The Institute for Justice is a libertarian public interest law firm with offices in Washington, D.C., Texas, Arizona, Minnesota, and Washington state. It's four pillars of litigation are economic liberty, free speech, property rights, and school choice. In the area of property rights, the Institute for Justice litigated the controversial eminent domain case, Kelo v. City of New London, which sparked nationwide reform in state and local use of eminent domain powers to seize real property. Now, IJ is also spotlighting civil asset forfeiture, in a comprehensive study of federal and state forfeiture laws, "Policing for Profit."

http://www.ij.org/

http://www.ij.org/about/3117

FEAR.org

Forfeiture Endangers American Rights Foundation (FEAR) is a 501(c)(3) charitable organization. It's mission is "reform of federal and state asset forfeiture laws to restore due process and protect property rights in the forfeiture process." It was formed in 1992 to raise awareness and to lobby Congress on issues related to asset forfeiture.

http://www.fear.org/

International Association for Asset Recovery

IAAR provides resources and training for professionals in the business of recovering seized assets. It is an international organization, and it offers membership benefits for accountants, investigators, attorneys, banking professionals, bankruptcy trustees, and others - such as certifications, conferences, networking, etc. in the field of tracing and recovering assets. IAAR provides services for law enforcement and prosecutors, as well as individuals seeking to recover lost assets.

http://www.iaaronline.org/

Americans for Forfeiture Reform

Americans for Forfeiture Reform is a non-profit research organization. It uses Open Records Laws and FOIA requests to gather information on practices of civil asset forfeiture by state and federal law enforcement agencies; submits amicus briefs in forfeiture lawsuits; conducts policy research; and produces law review articles on the use of civil asset forfeiture.

http://forfeiturereform.com/our-work/

Fraternal Order of Police

The FOP describes itself as "the world's largest organization of sworn law enforcement officers," and a "full service member representation organization."

On its website, the FOP lists "Legislation Opposed by the National Fraternal Order of Police," including "Legislation or amendments that would have the effect of weakening P.L. 106-185, the "Civil Asset Forfeiture Reform Act of 2000"

http://www.fop.net/about/faq/index.shtml

http://www.fop.net/legislative/oppose.shtml

TEOAF

The Treasury Executive Office for Asset Forfeiture (TEOAF) is the agency responsible for administering the Treasury Forfeiture Fund (TFF). The TFF is the deposit account for forfeitures siezed by the IRS, the Dept. of Homeland Security, Customs and Border Protection, the Secret Service, and the U.S. Coast Guard.

http://www.ustreas.gov/offices/enforcement/teoaf/about.shtml

The TEOAF website says its mission "to Affirmatively Influence the Consistent and Strategic use of Asset Forfeiture by Participating Agencies to Disrupt and Dismantle Criminal Enterprises."

The TEOAF's stated functions are:

- promote the use of proceeds from asset forfeitures to fund programs and activities aimed at disruption and dismantling criminal infrastructures, in particular major case initiatives and activities enhancing forfeiture capabilities;
- manage TFF revenues to cover the costs of seizure and forfeiture;
- train law enforcement personnel of the participating agencies in various aspects of asset forfeiture;
- promote cooperation among federal, state, and local law enforcement agencies through funding of expenses including equitable sharing, as well as the development of task forces;
- promote financial stability and vitality of the TFF;
- coordinate TFF policy among the participating agencies;
- through the precepts of risk management, identify and initiate action to address program risks.

DOJ AFF

The U.S. Department of Justice administers a separate Asset Forfeiture Fund at part of its "Justice Asset Forfeiture Program." Agencies within and outside the DOJ participate in the program, including:

- Criminal Division, Asset Forfeiture and Money Laundering Section
- Bureau of Alcohol, Tobacco, Firearms and Explosives
- Drug Enforcement Administration
- Federal Bureau of Investigation
- U.S. Marshals Service
- U.S. Attorney's Offices
- U.S. Postal Inspection Service
- Food and Drug Administration
- U.S. Dept. of Agriculture, Inspector General's Office
- Dept. of State, Bureau of Diplomatic Security
- Defense Criminal Investigative Service

Some of these agencies utilize criminal asset forfeiture, but many participate in the fund through Civil and Administrative forfeiture proceedings, which do not require any criminal charge against property owners.

The stated purpose of DOJ's Asset Forfeiture Program is to enhance public safety and security, using "the power to disrupt or dismantle criminal organizations that would continue to function if we only convicted and incarcerated specific individuals."

The DOJ Assets Forfeiture Fund was established to receive the proceeds of forfeitures and pay associated costs - including innocent owner claims - associated with "accomplishing the legal forfeiture of the property," and to finance "certain general investigative expenses."

http://www.justice.gov/jmd/afp/

http://www.justice.gov/jmd/afp/02fundreport/02_2.html

National Sheriffs Association

Like the Fraternal Order of Police, the NSA has taken official positions in support of asset forfeiture legislation and equitable sharing with federal agencies.

http://www.sheriffs.org/

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Online Resources

Internet-based legal research

LexisNexis is a paid subscription database and research tool. It contains statutes, case law, administrative law, secondary sources, Attorney General opinions, legislative histories and more for state, federal, and foreign jurisdictions. LexisNexis also has non-legal materials, such as information on corporations and law firms, as well as business and general news. LexisOne is a no-cost alternative to the paid Lexis subscription; it offers state and federal case law for the last ten years, and U.S. Supreme Court cases from 1781.

- http://www.lexisnexis.com/
- http://www.lexisone.com/caselaw/freecaselaw

Westlaw is another online legal research tool and database. It has much of the same material as LexisNexis, and uses it's own proprietary 'key number system' to classify and index legal documents by relevant topic. Westlaw is available by paid subscription, but anyone with a credit card can also access legal documents at the site's online document retrieval service.

- http://web2.westlaw.com/signoff/default.wl?fn=_top&rs=WLW10.10&rp=%2fsignoff%2fdefault.wl&mt=Westlaw&vr=2.0&sv=Split
- http://creditcard.westlaw.com/

Legal blogs

The American Civil Liberties Union (ACLU) hosts a web-blog called the "Blog of Rights." One blogger posits that civil asset forfeiture laws are used disproportionately against non-white property owners.

http://www.aclu.org/blog/racial-justice/easy-money-civil-asset-forfeiture-abuse-police

The Volokh Conspiracy is a legal blog, mostly written by law professors. Ilya Somin, Professor at George Mason Universityre School of Law, links to his writings on civil asset forfeiture here:

http://volokh.com/2010/04/06/institute-for-justice-report-on-asset-forfeiture/

The Forfeiture Law Blog is written by a Texas attorney specializing in civil asset forfeiture and white collar crime. The blog focuses on Texas forfeiture law, but it has links to other sites as well.

http://forfeiturelawblog.com/

Online articles

Reason.com is the online version of *Reason* magazine. It is a libertarian publication, focused on free markets and exposing government activity. Articles can be searched on Reason.com by author, topic, issue, and date. One of the Topics, with more than 30 articles, is "Asset Foreiture." Reason.com approaches forfeiture laws from a civil libertarian perspective; i.e., skepticism as to police motives and the effectiveness of asset forfeiture in deterring criminal behavior.

http://reason.com/topics/asset-forfeiture

Cornell University Law School's Legal Information Institute is a non-profit group that publishes legal materials online to facilitate public access to the law and to materials explaining the law. It offers an online "Backgrounder on Forfeiture," complete with case law, statutes, links to other sources, and a comprehensive overview of civil and criminal asset forfeiture. The problem with the site is that it was created pre-CAFRA, so some of the information is outdated; a researcher may want to browse this site or link to some of the referenced sources (such as legislative history); but visitors should take care to note changes in the law since the overview was written.

http://www.law.cornell.edu/background/forfeiture/index.htm

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