

# Above the Law: An Investigation of Civil Asset Forfeiture in California

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The logo for the Drug Policy Alliance, featuring the text "We are the Drug Policy Alliance." in white and yellow on a red background.

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## Above the Law: An Investigation of Civil Asset Forfeiture in California

### Executive Summary

This sweeping report reveals the troubling extent to which local law enforcement agencies have circumvented California state law standards, including taking property without first convicting someone of a crime and keeping the proceeds for their agencies.

**The report identifies numerous breaches of federal forfeiture rules, including budgeting future forfeiture revenue, failure to submit forfeiture expenses to third party auditors, unaccounted-for expenditures in documents submitted to the Justice Department, and failure to retain records related to asset seizures.**

The report then goes further, investigating how these practices have taken shape in California – by examining the federal forfeiture revenue of every police department in the state.

Civil asset forfeiture law allows the government to seize and keep money and other financial instruments, cars, real estate and any other property. In the case of federal law, this extends to individuals who have not been charged with or convicted of a crime. To initiate a forfeiture, all the government needs to show is ‘probable cause’ that certain laws have been broken – the lowest standard of proof in the American judicial system.

Many asset seizures and forfeitures in California involve alleged drug law violations, although it is not clear how many of those cases actually resulted in a conviction. The government says civil asset forfeiture should be viewed as a law enforcement tool and not as a way for police to departments to seek revenue. Yet the Justice Department tracks forfeiture revenue but doesn’t record whether the alleged criminals whose property is forfeited are charged with a crime or convicted. One investigation found that in over 80% of cases, the owner was not charged with a crime.

**Civil asset forfeiture inflicts the harsh punishments associated with criminal proceedings without the constitutional protections guaranteed by a criminal trial.**

Civil forfeiture actions are not limited to wealthy individuals and seizures of ranches, yachts, and vehicles. In fact, the average value of a state seizure in California in 2013 in constant dollars was \$5,145 – which is nearly identical to such seizures in 1992, where 94% of forfeitures involved seizures of \$5,000 or less.

Circumventing state law can impose an insurmountable financial burden on low-income and immigrant families and others lacking sufficient resources to defend themselves against forfeiture actions. An investigation by the *San Jose Mercury News* found many poor people who spoke little or no English caught up in a legal maze struggling to get their property back. That investigation led to major reforms to California law that improved due process and reduced police profit. This report reveals how law enforcement agencies in California have responded by turning to federal forfeiture, where these safeguards don’t apply. The report also shines a light on the failure of law enforcement agencies to abide by federal regulations.

This report is the first multi-year, comprehensive look at asset forfeiture in California, which commenced in 2011 with data collection and investigation. The exhaustive research included obtaining a wealth of data via Freedom of Information Act requests to the Justice Department and the Federal Treasury Department, as well as numerous records obtained via California Public Records Act requests. The author interviewed dozens of key players, including current and former federal, state and local law enforcement personnel, and current and former state legislators. Additionally, he tallied the annual federal forfeiture revenue of more than 300 city, county and state law enforcement agencies for the period between 2006 and 2013.

The harms of civil asset forfeiture on civil liberties, property rights, and the credibility of the U.S. justice system are detailed throughout this report. Federal civil asset forfeiture violates due process and property rights in numerous ways. There is no presumption of innocence; the legal threshold for seizing private property is very low; the onus is on the owner to reclaim their property; and no conviction is required for the government to forfeit private property once it has been seized.

The report also identifies law enforcement agencies directing scarce law enforcement resources toward forfeiture activities over general public safety concerns such as response times and sufficient patrol officers.

The report reveals that a handful of small cities in Los Angeles County lead the state in per capita seizures, and documents the failure of these cities to abide by federal regulations surrounding civil asset forfeiture. Cities were found to be budgeting future forfeiture revenue and some appeared to be engaged in budget supplanting, despite both practices being explicitly forbidden under federal regulations. The financial records pertaining to forfeiture kept by these cities were often inconsistent and in some cases absent.

## Key Findings:

This report identifies seven key areas of concern related to civil asset forfeiture practices by California law enforcement, contrary to requirements under state and federal law:

1. California Law Enforcement Skirting Protections Against Policing for Profit: In the wake of abuses of civil asset forfeiture, California reformed its asset forfeiture law to improve due process and property rights, while limiting law enforcement's ability to profit from seizing private property. California law enforcement has found a way around this by pursuing forfeitures federally where the state's protections do not apply. Between 2005 and 2013 California law enforcement agencies' revenue from state forfeitures remained flat while their revenue from federal forfeitures more than tripled. This trend is particularly prevalent in Los Angeles County. Eight out of the top 10 law enforcement agencies in California in terms of per capita federal forfeiture revenue are police departments of small to medium sized cities in Los Angeles County. These cities were also found to have contravened Federal Justice Department forfeiture regulations numerous times.
2. Lack of Due Process: Despite state law protections that require a conviction in most cases before property can be forfeited, local law enforcement can circumvent these standards by working with federal agencies. In this way, they have been able to take advantage of more lax federal forfeiture standards in which there is no presumption of innocence and no protection from forfeiture without a conviction.
3. Burden of Proof on the Accused: Under federal law, all it takes is "probable cause" for the law enforcement agency to seize someone's property. Any hope of recovering property is up to the owner, at his own expense to fight to get it back. In the case of an owner who had no knowledge of, nor consented to, the alleged drug violation that gave rise to the seizure, it is not up to the government to prove the owner was a party to the crime. Rather it is up to the owner to prove his innocence. This imposes insurmountable barriers for many people, especially lower- income families who may not be involved in any criminal behavior whatsoever.
4. Prioritizes Cash Grabs Over Drug Seizures: Records obtained via Freedom of Information Act requests describe multiple instances of cash grabs by law enforcement being incentivized over deterring drug sales, wherein police wait until a drug sale concludes and then seize the cash proceeds of the sale rather than the drugs, as drugs must be destroyed and are of no monetary value to law enforcement.
5. Jeopardizing Public Safety: Some LA County cities were found to be prioritizing asset forfeiture over general public safety concerns, like response times and sufficient patrol officers.
6. Possible Budget Supplanting: Supplanting – when a law enforcement agency collects a certain amount of asset forfeiture revenue one year and the city cuts the police budget by the same amount the following year – is strictly prohibited. Despite being explicitly forbidden by the federal government, some LA County cities are engaging in budget practices that look a lot like supplanting.
7. Budgeting Future Forfeiture Revenue: The federal government prohibits cities from budgeting future forfeiture revenue because of its distorting effect on law enforcement priorities. However numerous instances of this were documented in this investigation.
8. Inconsistent and Absent Reporting: In some cases cities in LA County did not disclose forfeiture income in city budgets. In other cases cities did not report forfeiture expenditures to auditors as required by federal rules. Sums relating to forfeiture were often inconsistent between different documents covering the same fiscal period.

**Key Recommendations:**

Based on the findings of this report, what has proven effective in other states, and the broader debate in the media and the Capitol about the efficacy and fairness of civil asset forfeiture practices, the Drug Policy Alliance (DPA) recommends a number of solutions to address the most egregious violations of law. Given the pervasive and destructive nature of the problems associated with civil asset forfeiture in California, DPA

recommends a comprehensive approach to reform that tackles each of the most problematic areas identified. These recommendations represent some of the most fundamental changes that must be made, but certainly are not all potential reforms. California can, and should, be encouraged to pursue any number of reforms above and beyond those listed here, including policies to greatly enhance transparency, accuracy and timeliness in the reporting of all asset forfeiture activities.

Finding	Recommendation
1 California Law Enforcement Skirting Protections Against Policing for Profit	Require state and local law enforcement agencies to follow California’s standards governing asset forfeiture in joint seizures with federal agencies; define ‘seizure as any instance when law enforcement asserts temporary or permanent control over the asset.
2 Lack of Due Process	Require a conviction before property can be forfeited.  Provide for the right to a court appointed attorney.
3 Burden of Proof on the Accused	Place the burden on the government to prove the property owner’s consent or knowledge of the crime leading to the seizure of property.  Raise the standard of proof police need to seize assets.
4 Prioritizes Cash Grabs Over Drug Seizures	Call on the California DOJ to develop and implement new training on asset seizure guidelines and curriculum.
5 Jeopardizing Public Safety	Pass local ordinances that de-prioritize asset forfeiture.
6 Possible Budget Supplanting	Require a federal audit of the cities highlighted in this report.
7 Budgeting Future Forfeiture Revenue	Require a federal audit of the cities highlighted in this report.
8 Inconsistent and Absent Reporting	Require a federal audit of the cities highlighted in this report.

## Introduction

Few societies are as wary of government intervention into the private property rights of its citizens as is the United States. Yet no democratic state confiscates more of its citizens' assets. The reason for that is civil asset forfeiture, which allows the government to seize money and other financial instruments, cars, real estate and any other property. Under federal law, the government can seize property and only needs to show "probable cause" – the lowest standard of proof in the U.S. judicial system – that the property is subject to forfeiture. The process for getting one's property back is complicated and expensive and doesn't require the government to prove beyond a reasonable doubt that the property owner committed any crime.

Civil asset forfeiture has long been one of the more controversial aspects of the drug war of which it is a product. Exposés of forfeiture abuse in the media have raised concerns over lack of due process, and the effect on police incentives of allowing law enforcement to keep what they seize – a phenomenon known as policing for profit. These factors led to a seven-year struggle on Capitol Hill that culminated in the Civil Asset Forfeiture Reform Act of 2000 (CAFRA). With its passage, many in Washington considered the matter resolved. But while Congress moved on, forfeiture kept growing.

**In 2001, the year after the passage of CAFRA, the federal government seized nearly \$700 million in assets. In 2012, the amount was over \$4.7 billion – a more than six-fold increase.**

Because of strong opposition from law enforcement associations, CAFRA did not address the profit motive that is at the heart of the 30-year growth of civil asset forfeiture. Nor did it address "Equitable Sharing," a clause of federal forfeiture law that allows state and local police to pursue forfeitures federally, and get back up to 80 percent of the value of forfeited assets.

This has been an attractive proposition for law enforcement in the 15 states that either forbid police from keeping any seized assets, or allow police to retain less than 80 percent of the value of seized assets. Police in states with better due process protections also have an incentive to pursue their forfeitures through the federal system, where law enforcement is more likely to prevail.

Few states offer a better example of the use of this loophole than California. There, state forfeiture law has stronger due process protections than federal law, and police can only retain 65 percent of the value of the assets they seize.

As this report highlights, police in California have rendered the protections afforded its citizens by state

law virtually meaningless through their use of equitable sharing. In the last decade, police revenue from forfeitures processed under state law has remained flat.

### **Meanwhile, police income from federal forfeitures has more than tripled.**

This dramatic increase is consistent with studies that have found that limiting police profit or improving due process at the state level encourages law enforcement to turn to federal forfeiture.

This report goes further, investigating how the practice of civil asset forfeiture has taken shape in California by examining the federal forfeiture revenue of every police department in the state. The annual federal forfeiture revenue of more than 300 city, county and state law enforcement agencies was tallied for the period of 2006 to 2013. (2006 was chosen because that was the year equitable sharing revenue began to surge in the state.) Each law enforcement agency's federal forfeiture revenue for the period was then divided by the population it serves to obtain a rate of per capita forfeiture income.

What emerges is a picture of a few relatively small cities clustered in Los Angeles County that are using equitable sharing to collect vastly disproportionate amounts of money. Eight of the top 10 cities in the state for per capita forfeiture revenue are in Los Angeles County.

### **An analysis of the fiscal records of these cities reveals widespread failure to abide by the federal government's rules governing forfeiture.**

The U.S. Justice Department stresses that civil asset forfeiture "is not designed to be, and should not be used as, an alternative funding source for state and local law enforcement."<sup>1</sup>

To prevent the abuse of law enforcement's forfeiture powers and the misuse of these funds, the federal government has implemented a series of regulations that police departments must follow. Crucially, police are forbidden from budgeting future forfeiture revenue.

All but one of the nine cities examined in this report have violated this rule. Many of the cities anticipated hundreds of thousands, sometimes millions of dollars in annual federal forfeiture revenue.

<sup>1</sup> Federal Justice Department correspondence with author, October 2014.

Numerous other breaches of federal forfeiture rules were identified, including failure to submit forfeiture revenue expenditures to third party auditors, unaccounted-for expenditures in documents submitted to the Justice Department, and failure to retain records related to seizures.

Failure to follow the Justice Department's federal forfeiture guidelines can result in a range of sanctions, from denial of requested forfeiture funds, to temporary suspension from the program, all the way to federal prosecution. However, there is no indication that any of the cities reviewed in this report have been sanctioned.

More broadly, the federal Justice Department does not endorse the use of equitable sharing to get around state laws that limit police profit or that better protect due process. But as this report highlights, the Department's own documents and past practices suggest otherwise.

Meanwhile, the California Department of Justice provides minimal oversight of local law enforcement's use of federal forfeiture.

Fifteen years after the passage of the Civil Asset Forfeiture Reform Act, civil asset forfeiture is once again in the spotlight. A total of three former directors and one deputy director of the Justice Department's Asset Forfeiture Office have publically criticized the program, with some calling for its outright abolition. Congress is once again looking to reform forfeiture by doing what it failed to do with CAFRA: addressing the profit motive and equitable sharing.

Remarkably, on January 16, 2015 Attorney General Eric Holder issued an order to end adoptive forfeitures.<sup>2</sup> These are instances in which a seizure, conducted by a state or local law enforcement agency under state law with no involvement by a federal agency, is pursued as a federal forfeiture. In return the state or local law enforcement agency collects 80% of what the federal government forfeits.

However, the scope of the reform is limited in several respects:

1. It does not address the fundamental injustice at the heart of civil asset forfeiture – punishment without conviction.
2. It does not reduce law enforcement's profit motive.
3. It does not affect forfeitures conducted by federal law enforcement agencies, while only affecting a limited share of forfeitures undertaken by state and local law enforcement agencies.

The following types of seizures are still eligible for federal forfeiture:

- Seizures by state or local police officers assigned to a task force that includes a federal law enforcement agency.
- Seizures by state and local police officers that are the result of joint federal-state investigations.
- Assets originally seized under state law for which there is a federal seizure warrant to take custody of the assets.

For all but one city examined in this report, "adoptions" accounted for less than 5% of seizures between 2008 and 2013. Three cities recorded no adoptive forfeitures during this period.

According to the Institute for Justice, adoptive forfeitures accounted for less than 10% of the value of property and cash confiscated through equitable sharing between 2008 and 2013.<sup>3</sup>

Congress is once again looking to reform forfeiture by doing what it failed to do with CAFRA, addressing the profit motive and equitable sharing. Three bills have been filed since July 2014 to that end.<sup>4</sup>

The report is divided into two parts. Part 1 considers civil asset forfeiture broadly:

- ✓ Examines the political and economic forces that gave rise to civil asset forfeiture and equitable sharing in particular;
- ✓ Describes how civil asset forfeiture and equitable sharing work;
- ✓ Assesses the harms associated with civil asset forfeiture, both to individuals and to democracy; and
- ✓ Describes state and federal forfeiture reform efforts and why they have had a limited effect.

Part 2 is an investigation of the agencies that are seizing the most federal forfeiture revenue per capita in California, looking at:

- ✓ How agencies are seizing so much;
- ✓ How agencies are spending the money;
- ✓ How these cities are violating federal forfeiture guidelines; and
- ✓ How the federal government has encouraged equitable sharing and been lax in enforcing its own forfeiture regulations.

<sup>2</sup> Prohibition on Certain Federal Adoptions of Seizures by State and Local Law Enforcement Agencies, Attorney General Eric Holder, January 16, 2015.

<sup>3</sup> *New Data Analysis Shows Revised Department of Justice Forfeiture Policy Would Stop Only a Fraction of Seizures*, Arlington VA.: The Institute for Justice, February 12, 2015.

<sup>4</sup> S.2644, H.R.5212 and H.R.5847.

## I. Civil Asset Forfeiture, the Exception to Drug Policy Reform

The United States is in the midst of a fundamental reassessment of its policy toward certain drugs. For decades, the country has pursued a highly punitive course characterized by “zero-tolerance” toward people who use or sell illicit drugs. To carry out these policies, the government has amassed extensive repressive powers, including long mandatory minimum sentences for drug offenses, three-strike laws and the militarization of law enforcement.

This approach to drug policy has come at a considerable financial and social cost. It has exacerbated the health risks associated with illegal drug use, contributed to record levels of incarceration, and often lifelong discrimination for millions of Americans, disproportionately affecting people of color and the poor. The drug war has also failed to achieve its own stated objectives: the availability of illegal drugs (as measured by their price and purity) has generally increased since the early 1980s, when the build-up began.<sup>5</sup>

After decades of such policies, public opposition to the drug war has dramatically increased. The last couple of years have witnessed unprecedented reforms of drug policy at the city, state and federal levels. One by one, the pillars of U.S. drug policy, including marijuana prohibition, widespread arrests for low-level drug offenses and mandatory minimum sentences are being challenged, and in some cases, repealed.

But despite recent action from Attorney General Holder, one feature of the old drug war shows few signs of abating – police seizing and keeping people’s private property without charging them with a crime, on the mere suspicion that the seized assets are connected to drugs. Federal forfeiture revenue has more than quadrupled in the past decade. Hundreds of millions more dollars are collected annually through state forfeitures, but because of spotty record keeping, the full amount is not known.

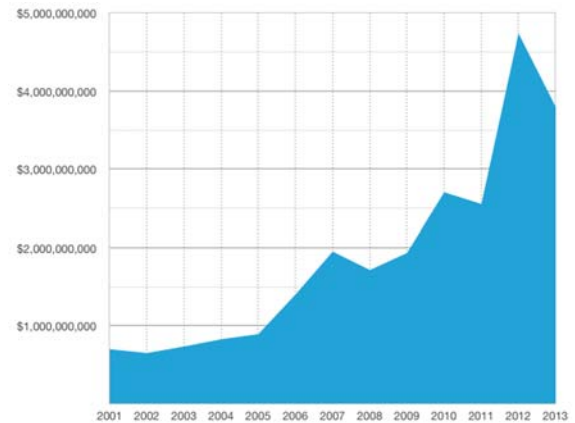
### 1) The Rise of Civil Asset Forfeiture

There are two kinds of asset forfeiture, criminal and civil.

Criminal forfeiture is *in personam*, meaning it is “against the person”; the owner must first be found guilty before the convicted party can have their assets forfeited.

<sup>5</sup> Werb, Dan, et al., “The Temporal Relationship between Drug Supply Indicators: An Audit of International Government Surveillance Systems.” *BMJ Open* 3, no. 9 (2013).

Figure 1: Annual federal asset forfeiture revenue FY 2001-2013



Source: Federal Justice Department and Treasury Department annual Asset Forfeiture Fund reports  
Note: figures include criminal and civil asset forfeiture

Civil forfeiture is *in rem*, meaning “against the thing”. Under federal law, the government doesn’t need to convict, let alone charge, the owner with any crime. It is based on the legal fiction that the property itself is guilty of a crime and is punished by being confiscated.

This legal doctrine has roots in the Old Testament and in English medieval law. In colonial America, the British Crown confiscated cargo and ships whose owners failed to pay unpopular taxes. The process was far from impartial – customs officers pocketed up to a third of the proceeds of the forfeiture.<sup>6</sup> This corrupt system was one of the early drivers of resistance to British rule.

Forfeiture was used sporadically during the course of U.S. history until the advent of the drug war, under which it grew exponentially. Over the past few decades, the kind of property subject to civil forfeiture has expanded greatly, while the required connection to drug activity has grown weaker.<sup>7</sup> Forfeiture is now applied beyond drug law violations – there are more than 400 federal forfeiture statutes relating to various crimes.<sup>8</sup>

In 1970, Congress passed the *Organized Crime Control Act* and the *Comprehensive Drug Abuse Prevention and Control Act*. These laws provided for criminal forfeiture in cases involving criminal syndicates and high-level drug distributors, as well as the civil forfeiture of controlled substances, raw materials, and

<sup>6</sup> Blumenson, Eric and Eva Nilsen, “Policing for Profit: The Drug War’s Hidden Economic Agenda,” *University of Chicago Law Review* 65, (1998): 35-114.

<sup>7</sup> Ibid.

<sup>8</sup> Williams, Marian, Jefferson Holcomb, Tomislav Kovandzic and Scott Bullock, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, Arlington VA.: The Institute for Justice, 2010.



any equipment involved in their production and distribution.<sup>9</sup>

In 1978 the *Psychotropic Substances Act* expanded civil asset forfeiture to include money and other objects of value furnished or intended to be furnished “in exchange for a controlled substance” and “all proceeds traceable to such an exchange.”<sup>10</sup>

But it was not until the 1980s and the great build-up of the war on drugs under President Reagan, with bipartisan support in Congress, that civil asset forfeiture took off.

Congress had already granted powerful tools to federal prosecutors and law enforcement agents. The problem was they were hardly using them.<sup>11</sup> The Justice Department and Congress set about fixing that with legislation that was adopted as part of the *1984 Comprehensive Crime Control Act*.

## 2) The Birth of “Equitable Sharing” and Policing for Profit

In addition to expanding forfeitable assets to include real property, in 1984 the law was reformed in two profound ways. Forfeiture revenue, which until then had gone into the General Fund, became set aside for law enforcement. Two funds were created to receive and manage forfeited assets, one in the Justice Department, the other in Customs (subsequently moved to the Treasury in 1992).

The other profound change was a clause that allowed state and local police to share in federal forfeiture.

There are two ways a seizure undertaken by a state or local law enforcement agency can be considered for federal forfeiture.

- A) The state or local law enforcement agency can request that a federal agency “adopt” the seizure subject to certain criteria. Following a successful forfeiture, 80 percent of the value of the forfeited property goes back to the state or local police department and the federal government takes a 20 percent cut.<sup>12</sup> This type of forfeiture, accounting for less than 10% of the value of all assets forfeited through equitable sharing, was halted by Attorney General Holder on January 16, 2015.

- B) If a federal agency is involved in the seizure, it is considered a “joint investigation” and can be pursued federally. On this subject, the Justice Department is vague, saying only “joint investigations are those in which federal agencies work with state or local law enforcement agencies or foreign countries to enforce federal criminal laws.”<sup>13</sup> The federal government determines the state or local agency’s share based on its role in the seizure and how much time the agency spent on the seizure.<sup>14</sup> According to the Institute for Justice, these joint investigative seizures account for over 90% of the value of equitable sharing, but are exempt from the new DOJ policy.<sup>15</sup>

David Smith, who was appointed the first deputy director of the Justice Department’s newly created Asset Forfeiture Office, describes the 1984 reforms as the introduction of “bounty hunting.”<sup>16</sup> According to Smith, their effect exceeded the Justice Department expectations, “We went from one extreme – basically no forfeiture cases – to vastly over-incentivizing law enforcement to bring these cases.”

**With local, state and federal law enforcement agencies suddenly able to keep all the proceeds under federal forfeiture standards, the value of assets confiscated surged from over \$100 million in 1983 (the year before the institution of equitable sharing) to \$460 million in 1990.<sup>17</sup>**

The expansion of federal asset forfeiture legislation was just one part of the war on drugs that led to a more than 200 percent increase in federal drug convictions over the course of the 1980s; in contrast, non-drug convictions increased 32 percent.<sup>18</sup> The federal government did not have the resources to wage the drug war on its own. Beginning under Reagan and continuing in successive administrations, the federal government greatly expanded its role in state and local law enforcement, while encouraging these entities to take a similarly “zero-tolerance” approach to drug law violations and other crimes.

<sup>9</sup> Hyde, Henry, *Forfeiting our Property Rights: Is Your Property Safe From Seizure*. Washington D.C.: Cato Institute 1995.

<sup>10</sup> Ibid.

<sup>11</sup> Government Accountability Office “Asset Forfeiture – A Seldom Used Powerful Tool in Combatting Drug Trafficking,” April, 1981.

<sup>12</sup> Asset Forfeiture and Money Laundering Section, U.S. Department of Justice, *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*, 2009.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> <http://endforfeiture.com/wp-content/uploads/2015/02/HolderPolicyChangeImpactOnePager-ijlogo.pdf>

<sup>16</sup> All quotes of David Smith in this report from interview by author, December 2014.

<sup>17</sup> Miller, Mitchell, Lance Selva “Drug Enforcement’s Doubled-Edged Sword: An Assessment of Asset Forfeiture Programs,” *Justice Quarterly* 11, (1994): 313-335.

<sup>18</sup> McDonald, Douglas and Kenneth Carlson, Abt Associates Inc., *Federal Sentencing in Transition, 1986-90*, Special Report, Washington D.C.: Department of Justice, Bureau of Justice Statistics, 1992.

This encouragement took various forms, including:

- Model state forfeiture legislation produced by the Drug Enforcement Administration (DEA). The DEA's 1981 *Model Forfeiture of Drug Profits Act* noted, that with tax dollars becoming scarce, "drug law enforcement has the potential, through forfeiture, of producing more income than it spends." The model legislation encouraged states to amend their laws to permit the civil forfeiture of "all moneys used to facilitate any drug law violation," all assets acquired from drug trafficking, and even money "found in close proximity" to illegal drugs, manufacturing or distributing paraphernalia or records related to drug activity. The DEA recommended that states funnel a substantial portion of forfeiture revenues to drug law enforcement.<sup>19</sup> By 1984, most states had adopted the DEA's model forfeiture legislation in whole or in part.<sup>20</sup> And the federal government encouraged states "to use the money derived from asset forfeiture to construct and operate prisons to handle the increase in prisoner population."<sup>21</sup>
- A host of law enforcement grant programs including multi-jurisdictional drug task forces, surplus military equipment giveaways, and Byrne grants.<sup>22</sup>
- Federal grants for prison expansion in states that followed stricter sentencing guidelines.<sup>23</sup>

These programs helped incentivize local police departments to join the drug war, providing hundreds of thousands of foot soldiers. Drug arrests more than doubled between 1980 and 1989.<sup>24</sup> To this day, drug violations remain the leading cause of arrest in the U.S. every year. Almost half involve marijuana, and more than 80 percent of arrests are for possession.<sup>25</sup>

<sup>19</sup> Drug Enforcement Administration, U.S. Department of Justice, *Model Forfeiture of Drug Profits Act*, January 1981.

<sup>20</sup> Drug Abuse Policy Office, U.S. Department of Justice, *1984 National Strategy for Prevention of Drug Abuse and Drug Trafficking*, 1984.

<sup>21</sup> Ibid.

<sup>22</sup> According to the National Criminal Justice Association, "The Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program is the cornerstone federal justice assistance program" and "is the leading source of federal justice funding for state and local jurisdictions." National Criminal Justice Association, "Cornerstone for Justice: Byrne Jag and Its Impact on the Criminal Justice System." (Washington, D.C.: National Criminal Justice Association, 2011), <http://www.ncja.org/sites/default/files/documents/cornerstone-for-justice-report.pdf>.

<sup>23</sup> Sabol, William, Katherine Rosich, Kamala Mallik Kane, David Kirk, Glenn Dubin, *The Influences of Truth-in-Sentencing Reforms on Changes in States' Sentencing Practices and Prison Populations*, Washington D.C.: Urban Institute, 2002.

<sup>24</sup> Federal Bureau of Investigation, "Drugs in America Report: 1980 to 1995" < <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/1996/96sec5.pdf>>

<sup>25</sup> Federal Bureau of Investigation, "Uniform Crime Reports", multiple years.

***"We wouldn't have a war on drugs in Los Angeles if it weren't for equitable sharing... This program is the greatest thing that ever happened to local law enforcement."***<sup>26</sup>  
**LAPD Deputy Chief Glenn Levant, 1988**

Equitable sharing of civil asset forfeiture proceeds had a substantial advantage over other forms of federal support to state and local law enforcement to target drug offenses. It was not dependent on the size of federal reserves or the political support on which all other federal grants depend. Rather, state and local police could simply go out and seize as much as they wanted – the possibilities were theoretically limitless.

For the Justice Department, it was a win-win. Forfeiture encouraged drug enforcement by police departments. But unlike other federal law enforcement programs, it didn't cost the Justice Department a penny; on the contrary, equitable sharing increased the size of the department's coffers.

Some in the Justice Department saw in equitable sharing a way for the Department to save on grants for state and local law enforcement.

Explaining why his department did not request appropriations for a new funding program for state and local law enforcement, Deputy Associate Attorney General William J. Landers told Congress in 1987, "we believe the equitable sharing of assets seized from drug dealers and others and forfeited by them is a better way for the federal government to assist the states and localities."<sup>27</sup>

A few days later, Deputy Attorney General Alfred I. Burns laid out his long-term vision for equitable sharing of forfeiture proceeds to the Law Enforcement Coordinating Committee. Describing equitable sharing as a "cost-free way" for the federal government to help the states in the drug war, Burns predicted a bright future for the program.

"In effect, we can pay a bounty out of the traffickers' and smugglers' pocketbooks for your cooperation in successful operations. During fiscal year 1985, the Justice Department approved the transfer of more than \$2.5 million to state and local agencies. In fiscal year 1986, this sharing accelerated to \$24.4 million, and sharing for 1987 is estimated at \$28 million, with a 1988 projection for equitable sharing to top \$30 million.

<sup>26</sup> Witkin, Gordon "Hitting Kingpins in Their Assets," *U.S. News & World Report*, December 5, 1988.

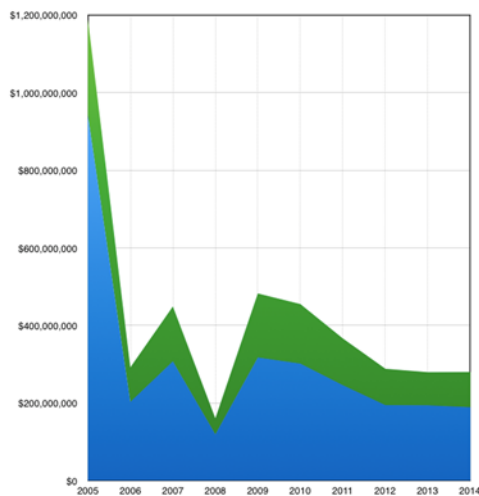
<sup>27</sup> Landers, William, Testimony to U.S. House Select Committee on Narcotics Abuse and Control, "Concerning Implementation of the Anti-Drug Abuse Act of 1986" March, 4 1987 <<https://www.ncjrs.gov/pdffiles1/Digitization/104711NCJRS.pdf>>

It will continue to grow. The potential is enormous... Ultimately we want to see sharing of forfeited assets take the place of continued out-and-out state grants.”<sup>28</sup>

**A quarter of a century later, revenue to state and local police from the Justice Department forfeiture fund is up 467 percent in inflation-adjusted dollars.<sup>29</sup>**

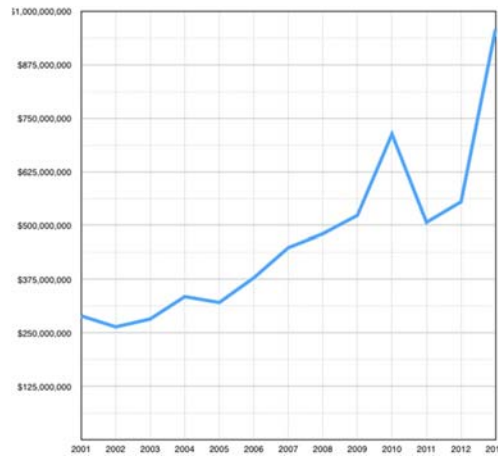
Mounting support for alternatives to punitive drug policies means state and federal drug enforcement funding for local law enforcement is subject to far greater scrutiny. Allocations from the federal government’s cornerstone law enforcement assistance program, Byrne-JAG grants, have declined every year since 2009 – undergoing cuts of more than 40 percent. Meanwhile, the Obama administration is reconsidering the Pentagon’s military weapons transfer program to police departments in the wake of police repression in Ferguson, Missouri and across the country. But federal forfeiture payments to state and local police continue to grow despite decreasing public support for a law enforcement-centered approach to drugs, and the Obama administration’s endorsement of reform.

**Figure 2A: Byrne-JAG grant awards to state and local law enforcement agencies FY 2005-2014**



Source: Federal Bureau of Justice Assistance

**Figure 2B: Federal equitable sharing payments to state and local law enforcement agencies FY 2001-2013**



Source: Federal Justice Department and Treasury Department annual Asset Forfeiture Fund reports  
Note: figures represent combined equitable sharing payments from Justice and Treasury Department forfeiture programs

As will be discussed later in this report, there are two other lasting impacts of equitable sharing.

**By introducing a profit motive into drug enforcement, it has marshaled a powerful political constituency for the preservation of controversial civil forfeiture laws. Police organizations have consistently been the loudest voices against forfeiture reform at the state and federal levels.**

Equitable sharing has also greatly undermined state laws that prevent police from making money from civil forfeitures or contain better due process protections.

**3) The Intentions of Civil Asset Forfeiture**

Elected officials and Justice Department personnel encouraged support for the expansion of civil asset forfeiture as a way to take the profit out of the illegal drug trade. As the Reagan administration made the case for expanding its power to seize assets, it described forfeiture as a critical additional deterrent to would-be drug-sellers, for whom the risk of prison was insufficient.

*“We believe that if the government were able to deprive narcotics dealers of significant portions of the illegal gain they realize, this would have an important deterrent effect and would stem the growth of drug trafficking.”*<sup>30</sup>  
Deputy Associate Attorney General, Jeffrey Harris, 1982

<sup>30</sup> Harris, Jeffrey, Deputy Associate Attorney General, Testimony to U.S. House Subcommittee of the Committee on the Judiciary, March 9, 1982 <https://www.ncjrs.gov/pdffiles1/Digitization/83805NCJRS.pdf>

<sup>28</sup> Burns, Arnold I, “Remarks Before the Law Enforcement Coordinating Committee Meeting.” Albuquerque, N.M., March 23, 1987, <<https://www.ncjrs.gov/pdffiles1/Digitization/106106NCJRS.pdf>>

<sup>29</sup> Equitable sharing payments in FY 1987 totaled \$56.5 million (\$115,863,296.65 in 2013 dollars) <<https://www.ncjrs.gov/pdffiles1/Digitization/156256NCJRS.pdf>>. Equitable sharing payments in FY 2013 totaled \$657,217,451.

But civil asset forfeiture, they said, would do more than deter drug sellers; by seizing the boats, planes, storehouses, and the lifeblood of the drug economy – cash – it would strike a blow at the means of production. This would cause the street price of illegal drugs to rise beyond the reach of consumers and address the crux of America’s drug problem: supply and demand, as President Reagan explained in 1986:

*“You can increase the price by cutting down on the supply by confiscation of the means of delivery. The Government, right now, already owns quite a fleet of yachts and airplanes and trucks and so forth that have been involved in that trade and that we have already intercepted.”<sup>31</sup>*

While the pursuit of these law enforcement goals was the primary stated objective of civil asset forfeiture, revenues from the program would have the secondary benefit of providing additional resources to police in their efforts to tackle the drug problem, which, by 1986, had been elevated to the status of a national security threat<sup>32</sup>, toward the goal of a “drug-free America by 1995.”<sup>33</sup>

#### 4) Civil Asset Forfeiture 30 Years On

Some three decades after the implementation of civil asset forfeiture laws federally and in every state, what has been the result? Contrary to the promises made by presidents and police chiefs, most illegal drugs are cheaper and purer than they were before the adoption of these laws – and just as widely available.<sup>34</sup>

Meanwhile, even on a local level, there is no evidence of civil asset forfeiture’s effectiveness in addressing illegal drug markets.

**“Unfortunately, not a single published study has linked forfeiture activities to the prevalence of criminal activity,”<sup>35</sup> criminologist John Worrall**

<sup>31</sup> Reagan, Ronald, “Remarks announcing the campaign against drug abuse and a question-and-answer session with reporters,” Washington, D.C. August 4, 1986.

<http://www.reagan.utexas.edu/archives/speeches/1986/080486b.htm>

<sup>32</sup> National Security Decision Directive 221, April 8, 1986

<http://fas.org/irp/offdocs/nsdd/nsdd-221.pdf>

<sup>33</sup> Anti-Drug Abuse Act of 1988

<https://www.ncjrs.gov/pdffiles1/Digitization/143053NCJRS.pdf>

<sup>34</sup> See Werb et al.; “The temporal relationship between drug supply indicators”; Johnston, Lloyd D., et al. *Monitoring the Future National Survey Results on Drug Use: 2014 Overview, Key Findings on Adolescent Drug Use*. Ann Arbor: Institute for Social Research, The University of Michigan, 2015, Table 14; and Johnston, Lloyd D., et al., *Monitoring the Future National Survey Results on Drug Use, 1975–2013: Volume II, College Students and Adults Ages 19–55*. Ann Arbor: Institute for Social Research, University of Michigan, 2014, Table 7-4.

<sup>35</sup> Worrall, John, *Asset Forfeiture*, Problem-Oriented Guides for Police, Office of Community Oriented Policing Services U.S. Department of Justice, November 2008.

[http://www.popcenter.org/Responses/asset\\_forfeiture/print/](http://www.popcenter.org/Responses/asset_forfeiture/print/)

#### **concluded in a 2008 paper on civil asset forfeiture produced for the Justice Department.**

Instead, civil asset forfeiture has become a critical revenue generator, allowing law enforcement to seize and keep ever-increasing amounts of money and property.

The Department of Justice Asset Forfeiture Program’s 2008-2012 strategic plan has as its theme “taking the profit out of crime.”<sup>36</sup> It touts forfeiture’s benefits, among them “keeping drugs off of our playgrounds and away from our children.” Yet the metric used to measure the achievement of these goals bears no relation to the profitability of crime or the accessibility of illegal drugs to minors. “The Program has seen enormous success in the past two fiscal years, including the forfeiture of more than two billion dollars of assets,”<sup>37</sup> boasts Richard Weber, Chief of the Justice Department’s Asset Forfeiture and Money Laundering Section.

This claim is akin to measuring the success of drug interdiction efforts by pointing to ever-larger seizures, when bigger busts might be evidence that the illegal drug business is booming. But the problems with federal civil asset forfeiture extend far beyond their lack of measurable impact on the supply of illegal drugs.

#### **5) The Harms of Federal Civil Asset Forfeiture: Violations of Due Process and Property Rights**

Legal scholars Eric Blumenson and Eva Nilsen assert that impartiality is inseparable from justice.<sup>38</sup> This impartiality is lost when the decision to seize property rests with law enforcement agencies that stand to profit directly from an eventual forfeiture of the seized property. This also applies to prosecutors who share in forfeiture proceeds. They decide which cases go forward, whether to offer a plea in exchange for seized property or whether to pursue a civil forfeiture or a criminal trial. All of these decisions are clouded by the influence of possible profit.<sup>39</sup> As such, some legal scholars have questioned the constitutionality of civil asset forfeiture, since the prospect of material gain by law enforcement undermines the *right to equal protection against selective prosecution* contained in the 5<sup>th</sup> and 14<sup>th</sup> Amendments.<sup>40</sup>

<sup>36</sup> U.S. Department of Justice, Asset Forfeiture Program *National Asset Forfeiture Strategic Plan 2008-2012*, January 2008.

<http://www.justice.gov/criminal/afmls/pubs/pdf/strategicplan.pdf>

<sup>37</sup> Ibid.

<sup>38</sup> Blumenson, Eric and Eva Nilsen, “Policing for Profit: The Drug War’s Hidden Economic Agenda,” *University of Chicago Law Review* 65, (1998): 35-114.

<sup>39</sup> Balko, Radley “The Forfeiture Racket: Police and Prosecutors Won’t Give up Their License to Steal” *Reason*, February 2010.

<sup>40</sup> Blumenson and Nilsen.



### ***5a: Lack of Due Process***

Civil asset forfeiture can result in a person having anything from their car, to their home, to their entire life's savings taken away.

### **These are levels of punishment associated with a criminal proceeding, without the constitutional protections guaranteed by a criminal trial.<sup>41</sup>**

There is no presumption of innocence and no protection from punishment without conviction.

### ***5b: Low Legal Thresholds for Seizure***

A law enforcement officer only needs probable cause to believe that the property is subject to forfeiture to be able to seize a person's money or property. Once the property has been seized, the owner has the burden of challenging the seizure, and to get their property back, they will most likely have to spend money on a lawyer.

### ***5c: Onus on Owner to Reclaim Property***

Following a seizure, the burden is on the owner, who must fight to have his or her property returned. If the owner fails to get the appropriate paperwork to the offices of the federal law enforcement agency in question within 35 days of the date of the notice of seizure, the property is forfeited forever and there is no recourse. "If they blow that deadline even by an hour, they're toast," says Jacek Lenz, a civil asset forfeiture lawyer in Los Angeles. "The government is completely unforbearing."<sup>42</sup>

The forms sent by law enforcement agencies to people whose property has been seized are confusing and misleading. The property owner is at first offered the opportunity to request "remission (pardon) or mitigation of the forfeiture." This process does not involve an impartial judge reviewing the facts of the case, but rather an administrator within the very federal law enforcement agency that stands to profit from the forfeiture deciding whether or not to return some or all of the property. None of this is explained on the form.

"It's a trap," says David Smith who since leaving the Justice Department has specialized in asset forfeiture as a defense lawyer and is widely regarded as the country's foremost expert on forfeiture. "Most defense lawyers, much less the average person who files a petition, they think all I have to do is explain this is clean money, it has nothing to do with drugs and I'll get my money back," says Smith. In truth, in cases involving an individual whose property has been seized pursuant to an alleged drug violation, the remissions process is "a charade at DEA and at Customs and Border Patrol," says Smith. "They are just in the business of denying

petitions and most lawyers would never know that," he says. "It's nothing more than begging to get it back,"<sup>43</sup> concurs Jim Roberts, a forfeiture lawyer in San Jose.

It is only lower down on the notice of seizure that the property owner is informed of their right to contest the forfeiture in a US District Court.

### ***5d: Going up Against the Federal Government***

Asset forfeiture law is a highly specialized legal field derived from 18<sup>th</sup> century maritime law. As such, a very small number of lawyers have the relevant expertise. Claimants face federal attorneys with considerable resources and power. With the law so heavily weighted in favor of the government, Roberts doesn't advise prospective clients to pursue cases where the value of property seized is less than \$20,000 in a state case in California, or under \$50,000 in a federal case.

The federal government can seek to stay a forfeiture case if there is a pending investigation, meaning cases can go on for years. Faced with these odds, many property owners end up settling with the Justice Department rather than let legal bills mount indefinitely. "The government counts on that," says Lenz.

### ***5e: No Conviction Required***

Once the case gets to court, the government only needs to prove their case by the lesser "preponderance of the evidence" standard, not the "beyond a reasonable doubt" standard required in criminal trials. Owners of seized property who were not involved in the alleged crime have to establish their innocence.

### **The burden is not on the government to prove the owner consented to or had knowledge of the alleged crime, but rather the owner has to affirmatively prove their innocence.**

### ***5f: Separation of Powers***

A legislative body's power to determine the budget of various departments is a vital check on executive power. It is the means by which the citizenry, through its elected representatives, exerts control over the size and scope of government and how it spends public resources. A legislature or city council's power of the purse is undermined by forfeiture, which creates self-funding law enforcement agencies that are effectively given a blank check.

As the legal scholars Eric Blumenson and Eva Nilsen have pointed out, an appropriation is "not simply a procedural mechanism by which funds are released,"<sup>44</sup> but a core decision by a legislative body of the relative worth of the programs it funds. This untethering of

<sup>41</sup> Blumenson and Nilsen.

<sup>42</sup> All quotes of Jacek Lenz from interview with author, July 2014.

<sup>43</sup> All quotes of Jim Roberts from interview with author, June 2012.

<sup>44</sup> Blumenson and Nilsen..

funding from legislative oversight is even clearer with drug task forces, which are fairly autonomous, span multiple jurisdictions, and rely to a large extent on forfeitures to pay for their operations. Given their unique powers, they require more scrutiny, not less.

### **6) Distortion of Law Enforcement Priorities: Policing for Profit**

*“The purse and the sword ought never get into the same hands.”*  
- Constitution framer George Mason

Forfeiture provides an incentive for police to focus on drug enforcement – a crime involving a willing buyer and a willing seller – over other, more serious public safety concerns. One study found that in over 80 percent of civil forfeiture cases no one was charged with a crime.<sup>45</sup> The Justice Department does not know in what percentage of civil forfeiture cases a property owner is actually arrested or charged or prosecuted.<sup>46</sup>

More narrowly, forfeiture can encourage police to focus on potential targets based on their assets instead of their importance within the drug market or the threat they pose to public safety.

**Perversely, it may encourage police to wait until after a drug sale occurs and then seize the proceeds of the sale rather than the drugs, as the latter must be destroyed and are of no monetary value to law enforcement.**

Both of these types of distortions were reported in a study co-authored by criminologist Mitchell Miller.<sup>47</sup> Miller spent a year as a confidential informant for narcotics operations in a southern state, during which he worked on cases with municipal, county and state law enforcement agencies.

This distortion of priorities toward the pursuit of profit is exacerbated when police departments come to depend on forfeiture revenue, as is the case for some police departments.

In a 2001 survey of 1400 law enforcement agency chiefs, nearly 40 percent of responding agencies stated that civil asset forfeiture was necessary as a budget supplement.<sup>48</sup>

This reliance is reflected in police budgets. As this report has uncovered, a number of police departments are adopting future forfeiture revenues – anywhere from

hundreds of thousands to millions of dollars – in their budgets.

**The anticipation of forfeiture revenue is occurring despite the fact that it is prohibited by both California and federal Justice Department guidelines.**

**Police officers in cities large and small report being encouraged by city officials to set and meet forfeiture targets.**

**The late Joseph McNamara was Police Commissioner of Kansas City and later ran the San Jose Police Department for 15 years. He said he was pressured to seek and seize forfeiture revenue to meet basic department needs.**

*“Money was always scarce for police training and for police equipment and things like that. And so this was a great source of incentive for local police to seize any property that would be argued was achieved through the drug trade and it became quite lucrative.*

*One year when I was police chief of San Jose, the city manager sent a proposed budget to me and there were zero dollars for equipment. So I met with him and politely said that it’s traditional when you have a police force that you buy police cars and police uniforms and equipment and pay the police and I notice you gave me no money for equipment last year.*

*He waved that away and said, well you guys seized \$4 million dollars last year in drug seizures and I expect you to do better next year. You can buy your equipment out of that money. And by the way, whether you do better or not will be reflected in your evaluation of your employment.”<sup>49</sup>*

**Diane Goldstein served for 21 years on the Redondo Beach police force. As head of the Special Investigation Unit, she oversaw the city’s asset forfeiture activities. She says there was pressure to set targets for forfeiture revenue, especially in times of fiscal constraint.**

*“I started seeing it post-9/11. Asset forfeiture was one of those things, when we started looking at budgets. That was always the question that I got, ‘How much money are we*

<sup>45</sup> Hyde.

<sup>46</sup> Correspondence between author and federal Justice Department, October, 2014.

<sup>47</sup> Miller and Silva.

<sup>48</sup> Worrall, John, “Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement,” *Journal of Criminal Justice* 29, (2001): 171-187.

<sup>49</sup> Joseph McNamara interviewed by author, June, 2012.

*going to get for asset forfeiture?' We could get no money next year, or we could get a billion dollars if we got lucky, but you can't count on it, and chiefs and city managers started looking at that as a way of balancing the federal Justice Department has even succumbed to this temptation. In 1989, all U.S. Attorneys were instructed to steer resources toward forfeiture efforts if necessary "to increase forfeiture production."<sup>50</sup>*

**Acting Deputy Attorney General Edward S.G. Dennis told U.S. Attorneys that "if inadequate forfeiture resources are available to achieve the above goals, you will be expected to divert personnel from other activities or to seek assistance from other U.S. Attorneys' offices, the Criminal Division, and the Executive Office for United States Attorneys."<sup>51</sup>**

The following year, the Attorney General Bulletin alerted U.S. Attorneys that they must "significantly increase production to reach our budget target... Failure to achieve the \$470 million projection would expose the Department's forfeiture program to criticism and undermine confidence in our budget projections. Every effort must be made to increase forfeiture income during the remaining three months of [fiscal year] 1990."<sup>52</sup>

A few years later, the Justice Department counseled task force commanders to consider the financial rewards when deciding which targets to pursue. "It will be useful for task force members to know the major sources of these assets and whether it is more efficient to target major dealers or numerous smaller ones."<sup>53</sup>

Allowing police to seize and keep private property with so few checks and balances also increases the risk of corruption, which is already a frequent problem in drug law enforcement.<sup>54</sup>

<sup>50</sup> U.S. Dept. of Justice, Asset Forfeiture Manual, Directive 89-1 p. B-584, 1989, in Hollander, Nancy, statement before the U.S. House Committee on Government Operations Legislation and National Security Subcommittee, "Regarding the Federal Asset Forfeiture Program" June, 22 1993.

<sup>51</sup> U.S. Dept. of Justice, Executive Office for U.S. Attorneys, 37 U.S. Attorney's Bulletin 214 in Hollander.

<sup>52</sup> U.S. Dept. of Justice, Executive Office for United States Attorneys, United States Attorney's Bulletin 180 (Aug. 15, 1990) in Hollander.

<sup>53</sup> Justice Research and Statistics Association, "Multijurisdictional Drug Control Task Forces: A Five-Year Review 1988-1992" 9 (Oct 1993) in Blumenson and Nilsen.

<sup>54</sup> Blumenson and Nilsen. The authors cite the case of almost \$66,000 hidden in the former headquarters of the Western Area Narcotics Task Force in Paducah, Kentucky. An investigation revealed that many of the seizures were unconnected to any drug transaction and some were for as little as 8 cents. Seizures were not recorded and cash was stored

## 7) Attempts at Reform

### California

As far back as the late 1980s, some in law enforcement recognized the inherent potential for abuse associated with forfeiture. "The asset seizure laws are very broad, giving considerable latitude. If this latitude is abused, the courts or the legislature will certainly impose reforms," predicted Lieutenant Edward Tunstall of the Orange, California Police Department in 1989.<sup>55</sup>

It wasn't long before scandals materialized, prompting reform bills in state capitols and Washington, DC.

Within a year of Lieutenant Tunstall's warning, news emerged that L.A. County Sheriff's Department narcotics officers were helping themselves to cash and property seized in raids. Sheriff's Sergeant Robert Sobel, a 19-year veteran who commanded a narcotics unit, testified that officers stole \$60 million in cash in 1988 and 1989 alone.<sup>56</sup> In all, 12 narcotics deputies were convicted.<sup>57</sup>

Then, on the morning of October 2, 1992, 30 officers from seven local, state and federal agencies raided the ranch of millionaire Donald Scott in Ventura County.<sup>58</sup>

The multi-jurisdictional team included agents from the L.A. County Sheriff's Department, LAPD, National Guard, National Park Service, U.S. Forest Service, California Bureau of Narcotic Enforcement, DEA, even two researchers from NASA's Jet Propulsion Lab. They were acting on a tip from an informant that Scott was growing pot.

Hearing intruders burst through his door, Scott grabbed his .38. Moments later, two sheriff's deputies shot and killed him. Agents scoured the property and found no drugs.

In its investigation, the Ventura County District Attorney found that, prior to the raid, agents had discussed the possibility of seizing the 200-acre property. The DA concluded that the team of officers, which

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in envelopes, bags, and lockers. The police chief estimated that most of the money found would be "returned to the owners because it was not properly seized."

<sup>55</sup> Tunstall, Edward, "Managing the Changes in California Narcotics Enforcement Brought About by Asset Seizure Laws" Command College Class VIII, Peace Officer Standards and Training (POST), Sacramento, California 1989.

<sup>56</sup> Reich, Kenneth and Victor Merina, "Ex-Sergeant Sentenced, Alleges Misconduct" *Los Angeles Times*, April 13, 1993, [http://articles.latimes.com/1993-04-13/local/me-22275\\_1\\_robert-sobel](http://articles.latimes.com/1993-04-13/local/me-22275_1_robert-sobel).

<sup>57</sup> Ibid.

<sup>58</sup> Office of the Ventura County D.A. "Report on the Death of Donald Scott", March 30, 1993. <http://www.fear.org/chron/scott.txt> (all facts cited about the raid and the report from this source)

included two deputies from the L.A. County Sheriff's forfeiture unit, had been partially motivated by the prospect of seizing and keeping valuable property.

Forfeiture actions are not limited to wealthy individuals. An investigation by the *San Jose Mercury News* found many poor people, some who spoke little or no English, caught up in a legal maze struggling to get their property back.<sup>59</sup> Far from being kingpins, many were never charged with or convicted of a crime.

**In 1992, 94 percent of state forfeitures in California involved seizures of \$5,000 or less.<sup>60</sup> In that regard, little has changed: the average value of a state forfeiture in California in 2013 in constant dollars was \$5,145.<sup>61</sup>**

These incidents and revelations led to a groundswell of support for forfeiture reform from a coalition including FEAR (Forfeiture Endangers Americans' Rights), business associations and NORML (National Organization for the Reform of Marijuana Laws). Reform legislation was introduced in the California Assembly. The state's law enforcement associations and its Attorney General opposed reform, but trying to kill the bill was not an option. California's existing forfeiture statute was set to expire, which would have left the state with no forfeiture law. "It was our bill or no bill,"<sup>62</sup> says its sponsor, former assemblyman John Burton, who now chairs the state Democratic Party.

AB 114, also known as the Burton bill, became law in 1994. It improved due process, requiring law enforcement to first obtain a conviction before forfeiting real estate, vehicles, boats or planes, and money up to \$25,000. For greater sums, the standard of proof was raised to "clear and convincing evidence". Law enforcement's share of seized assets was reduced from 76.5% to 65%, while the share going to district attorneys was reduced from 13.5% to 10%. The remaining share, which had gone to the Office of Criminal Justice Planning, was redirected to the state's General Fund.

<sup>59</sup> Webb, Gary, "The Forfeiture Racket," *San Jose Mercury News* Aug-Sept. 1993.

<sup>60</sup> Benson, Bruce, "Escalating the War on Drugs: Causes and Unintended Consequences" *Stanford Law Review* 20, No.2 (2009): 293-359

<sup>61</sup>The California state forfeiture report for 2013 reports a total of 3,293 forfeiture cases completed in 2013. The total value of those forfeitures was \$28,130,455 for an average of \$8,542.50 per forfeiture. To compare the average value of state forfeitures in 2013 and 1992 in constant dollars, the value of \$8,542.50 in 1992, was obtained using the Bureau of Labor Statistic's inflation calculator ([http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm)) [http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/asset\\_forf/2013\\_af/af.pdf](http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/asset_forf/2013_af/af.pdf)

<sup>62</sup> All quotes of John Burton from interview by author, November 2014.

Subsequently there have been efforts to limit the use of equitable sharing to circumvent California's forfeiture law.

In 2000, the California Assembly and Senate approved such a bill (SB 1866). But in the face of widespread opposition from law enforcement organizations, Governor Gray Davis vetoed it. Eleven years later, Orange County Republican State Representative Chris Norby introduced a similar bill (AB 639). It overwhelmingly passed the Assembly, before running into the opposition of every statewide law enforcement organization as well as California Attorney General Kamala Harris. Law enforcement argued that it would discourage cooperation on drug enforcement between federal and state and local police. The bill failed to make it out of the Senate.

#### National

Meanwhile, the abuses of forfeiture in California and elsewhere prompted calls to reform federal forfeiture law. Republican Congressman Henry Hyde and Democratic Congressman John Conyers filed reform bills in 1992 and 1993. It would take years until those reforms saw the light of day with the signing of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA).

**While CAFRA provided some remedies,<sup>63</sup> it did not address punishment without conviction, the profit motive, or equitable sharing.**

As described earlier in the report, some states significantly limit the percentage of seized assets police can keep. The constitutions of North Carolina and Missouri, for example, require that all such revenue be spent on education. With the advent of equitable sharing, police in these states pursued forfeitures federally as a way to keep most of the money. Concerned parties in some states, including education groups, sought to amend federal forfeiture law to prevent equitable sharing from being used to evade state law.<sup>64</sup>

In their camp was none other than the sponsor of equitable sharing legislation back in 1984, Representative Bill Hughes. Within a year or two, the Congressman, who was the chair of the House Sub-Committee on Crime, grew concerned about the overall lack of accountability of federal law enforcement agencies that were stockpiling millions of dollars' worth of forfeited currency and property. Hughes was also dismayed to find that police departments were using equitable

<sup>63</sup> CAFRA increased the government's burden of proof to a "preponderance of evidence." It also established an innocent owner defense and provided for court appointed counsel for indigent claimants in some cases.

<sup>64</sup> Benson, Bruce "Highway Robbery", *The Freeman*, July 1, 1993.



sharing to evade state law. “It was never designed for that,” says Hughes. “We felt that was an abuse that we needed to deal with.”<sup>65</sup>

Hughes took his concerns to the Justice Department but found the Attorney General unreceptive. “The Department of Justice under the Reagan administration was...siding with the local departments and law enforcement on the issue, so it was very difficult to move any legislation,” says Hughes.

In 1988, Hughes saw an opening. During conferencing over that year’s Anti-Drug Abuse Act the congressman succeeded in amending equitable sharing. Section 6077 prohibited equitable sharing when used “for the purpose of circumventing state laws prohibiting forfeiture or limiting the use or disposition of forfeited property.”<sup>66</sup> The Justice Department interpreted it to require an end to all adoptive seizures.<sup>67</sup>

Police groups sprang into action seeking to repeal this clause. These included the International Association of Chiefs of Police, and the Florida Department of Law Enforcement.<sup>68</sup> Not surprisingly, some of the most vociferous opposition to the reform came from Joseph W. Dean, Secretary of North Carolina’s Department of Crime Control and Public Safety, where police could not keep any seized assets under the state constitution. “Law enforcement is scared to death that it’s going to be taken away,” Dean said.<sup>69</sup>

Dean told Congress that without the promise of profit, police in North Carolina would be disinclined to work with the federal government on drug enforcement or seize the assets of suspected drug sellers. “The failure of the DEA to enlist state and local government in its cases due to the lack of the financial incentive of federal forfeiture, will have a severely detrimental effect,” Dean said adding that “if this financial sharing stops, we will kill the goose that laid the golden egg.”<sup>70</sup>

**The police lobby was successful. Tucked away in the 1990 Defense appropriations bill was a repeal of Section 6077.<sup>71</sup>**

<sup>65</sup> All quotes of Bill Hughes from interview with Author, December 2014.

<sup>66</sup> Anti-Drug Abuse Act of 1988.

<sup>67</sup> Benson, Bruce “Highway Robbery”, *The Freeman*, July 1, 1993

<sup>68</sup> *Ibid*.

<sup>69</sup> Dean, Joseph W., Testimony to the Subcommittee on Crime of the Committee on the Judiciary of the House of Representatives, “Federal Drug Forfeiture Activities” April, 24, 1989, [http://lcweb4.loc.gov/service/il/pdbs/pdbs13a/PDDBS\\_300\\_test/00183855049/00183855049.pdf](http://lcweb4.loc.gov/service/il/pdbs/pdbs13a/PDDBS_300_test/00183855049/00183855049.pdf)

<sup>70</sup> *Ibid*

<sup>71</sup> Benson, Bruce and David Rasmussen “Predatory Public Finance and the War on Drugs 1984-1989”, *The Independent Review* Vol.1, No.2, Fall 1996.

Virtually no one noticed the Trojan Horse including Bill Hughes. “We didn’t learn about it ‘til after it was done,” says Hughes who notes that it was a way of getting around the Judiciary Committee. David Smith, the former Assistant Director of the Asset Forfeiture Office at the Department of Justice, says this is typical of the Department. “Why was it in the Defense appropriation? Because they didn’t want anybody to know about it, so it was buried there....this is democracy at work,” says Smith.

In the 1990s, Representative Henry Hyde took up the cause of reining in forfeiture. He and others pushing for the reforms that led to the passage of the Civil Asset Reform Act [CAFRA] of 2000 knew that removing the profit motive for federal agencies and state and local police was the most important issue. “We were well aware that was the biggest problem,” says David Smith who helped write CAFRA.

“The sheriffs lobby, the police chiefs lobby, and the state district attorneys lobby, all of whom were in the battle, that was the main thing they cared about is preserving earmarking and equitable sharing,” says Smith. As for the due process reforms, “they really didn’t care about the rest of the reforms in the Hyde Bill and didn’t vigorously oppose them because it wasn’t a money issue.”

The bill’s sponsor and biggest champion, Congressman Henry Hyde, opted to pick his battles and decided against addressing equitable sharing or the monetary incentives for federal law enforcement.

“I have been around Capitol Hill long enough to know that no legislation has a realistic chance of becoming law that will take hundreds of millions – indeed, billions – of dollars away from the Justice Department and state and local police agencies – away from the war on drugs,”<sup>72</sup> Hyde wrote.

## 8) Equitable Sharing: Undermining Forfeiture Reform

California law is not alone in how it seeks to limit abuses associated with civil asset forfeiture.

Several states have even stronger due process requirements before private property can be forfeited to police.

<sup>72</sup> Hyde

**Figure 3: Standard of proof required for government to prevail when owner contests forfeiture in court**

Standard of proof	State
Beyond a Reasonable Doubt	Nebraska, North Carolina, Wisconsin
Clear and Convincing and Beyond a Reasonable Doubt	California
Clear and Convincing	Colorado, Connecticut, Florida, Minnesota, Nevada, New Mexico, Ohio, Utah, Vermont
Preponderance of the Evidence and Clear and Convincing Evidence	Kentucky, New York, Oregon
Preponderance of the Evidence	Federal forfeiture, Arizona, Arkansas, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Mississippi, New Hampshire, New Jersey, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia
Probable Cause and Preponderance of the Evidence	Georgia, North Dakota, South Dakota, Washington
Prima Facie/Probable Cause	Alabama, Alaska, Delaware, Illinois, Massachusetts, Missouri, Montana, Rhode Island, South Carolina, Wyoming
	Source: Institute for Justice

Source: After Williams, Marian, Jefferson Holcomb, Tomislav Kovandzic and Scott Bullock, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, Arlington VA.: The Institute for Justice, 2010

Some states have also addressed the profit motive by either limiting the share of seized assets police can keep or by preventing them from keeping any proceeds.

**Figure 4: Share of forfeiture revenue kept by law enforcement in each state**

Percentage	State
0%	Indiana, Maine, Maryland, Missouri, North Carolina, North Dakota, Ohio, Vermont
50%	Colorado, Wisconsin
60%	Connecticut, New York
63%	Oregon
65%	California
75%	Nebraska
80%	Federal Forfeiture (state and local law enforcement share of proceeds, with balance going to federal law enforcement), Louisiana, Mississippi
85%	Florida
90%	Illinois, Minnesota, New Hampshire, Rhode Island, Texas
95%	South Carolina
100%	Alaska, Alabama, Arkansas, Arizona, Delaware, Georgia, Hawaii, Idaho, Kansas, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming

Source: After Williams, Marian, Jefferson Holcomb, Tomislav Kovandzic and Scott Bullock, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, Arlington VA.: The Institute for Justice, 2010

But police in the 21 states whose forfeiture laws are more restrictive than federal law (whether in terms of better due process or limiting police forfeiture revenue) have an easy workaround – equitable sharing. They can route most of their forfeitures through the federal government.

State law prevents police in Indiana, Maine, Maryland, Missouri, North Carolina, North Dakota, Ohio and Vermont from receiving forfeiture revenue. In these states, forfeiture revenue either goes into the general fund or to school funding. But law enforcement in these states collected over \$196 million in asset forfeiture revenue between 2001 and 2013 thanks to equitable sharing.

A 2010 study measured what happens when states place greater limits on forfeiture. Its results uncovered further evidence of policing for profit.

**“The findings from the equitable sharing analysis are unequivocal: Agencies in states that limit the ability to profit from forfeiture proceeds receive significantly more equitable sharing proceeds.**

**This suggests that law enforcement agencies are circumventing restrictive state laws,”<sup>73</sup> the authors concluded.**

There is a third reason for law enforcement to entrust their forfeitures to the federal government. Veteran forfeiture lawyer David Michael says federal prosecutors have more resources and are much more adept at going after property than district attorneys. “They’ve got a real big team and they really know how to process forfeitures. States, counties, they have a forfeiture attorney but you know they don’t have the resources to really assign a big force to do forfeitures,”<sup>74</sup> Michael says.

<sup>73</sup> Williams, Marian, Jefferson Holcomb, Tomislav Kovandzic and Scott Bullock, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, Arlington VA.: The Institute for Justice, 2010.

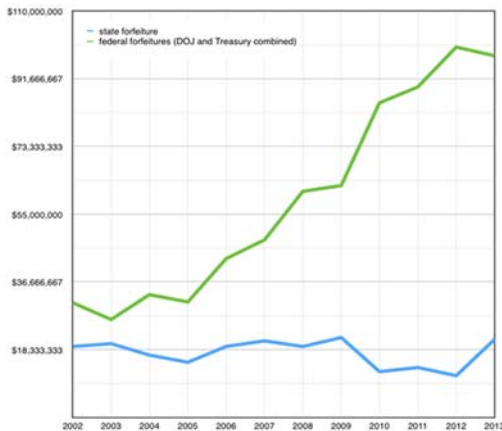
<sup>74</sup> All quotes of David Michael from interview by author in 2012 and 2014.

## II. California Law Enforcement Agencies Avoiding State Forfeiture Controls Through Equitable Sharing

California offers a dramatic example of this turn toward federal forfeiture.

**Since 2005, federal forfeiture revenue has more than tripled while state forfeiture revenues have hovered around the same level.<sup>75</sup>**

**Figure 5: Forfeiture revenue collected by California law enforcement 2002-2013**



Source: California Justice Department annual Asset Forfeiture Reports and Federal Justice Department and Treasury Department annual Asset Forfeiture Fund reports.

Note: Several counties did not report how much state revenue they earned to the California Attorney General's office in 2011, 2012, and 2013.

Note: California state forfeiture revenue is reported on a calendar year basis. Federal forfeiture revenue is reported on a fiscal year basis.

**“They saw that the road was blocked here and they found another avenue,” says the author of California’s reformed forfeiture statute, John Burton.<sup>76</sup>**

What accounts for the 10-year lag between the reform of California’s forfeiture laws and the sharp rise in federal forfeiture revenue to the state? Experts cite several factors:

### 1) Sharp rise in federal forfeiture revenue to state

#### Law Enforcement Training

San Francisco-based forfeiture attorney David Michael points to increased training offered by law enforcement organizations to California police officers in the early-to-mid 2000s. “They started to develop all these programs

where they were training agents about how to do an interdiction to guarantee to get a forfeiture,” says Michael. Indeed, the California Narcotics Officers Association (CNOA) began offering a course on civil asset forfeiture in 2006 that is certified by the state’s Commission on Peace Officer Standards and Training (POST).<sup>77</sup> The subsidized course is offered up to five times a year with space for 50 officers per session. The Vice-Chairman and the Secretary of CNOA’s Region III hail from the Baldwin Park and La Verne police departments,<sup>78</sup> which have some of the highest per capita rates of federal forfeiture revenue in California.

#### Profit Motive

For their part, veteran state and local law enforcement officers agree that the greater share of proceeds available to police is a factor motivating departments to pursue forfeitures federally rather than via state law. The city of Baldwin Park in L.A. County has among the highest levels of per capita federal forfeiture in California. Over the last 10 years for which complete records are available, the city collected 69 times more money from federal justice department forfeitures (\$4,557,591) than it did from state forfeitures (\$66,284.17).

“We use federal forfeiture,” says Baldwin Park Police Captain David Reynoso, “It’s just more beneficial to us.” The 25 year-veteran and former supervisor of the department’s narcotics unit also points to the fact that many of the seizures stem from federal narcotics cases. Kent Shaw is the former chief drug enforcement officer in California and the current Deputy Director of the Division of Law Enforcement at the California Department of Justice. Shaw says there are several reasons for the growth in equitable sharing in California. He cites the financial advantages police departments get from pursuing forfeitures cases federally. “Typically under the federal route, all things being equal, there’s about an 80 percent return on any forfeiture vs. the state level it’s only about 50 percent.”<sup>79</sup>

Shaw also points to greater overall law enforcement cooperation between federal, state and local law enforcement in the wake of September 11, 2001, which has led to more collaboration in drug cases. “There’s been a greater push, particularly in the intelligence world, to share information, to work more cooperatively,” says Shaw. “Anytime you have more federal agencies working in conjunction with local agencies, there’s probably a greater likelihood that those cases will be adopted by the U.S. attorney’s office.”<sup>80</sup>

<sup>75</sup> California Justice Department annual Asset Forfeiture Reports, Federal Justice Department annual Asset Forfeiture Fund reports and Federal Treasury Department annual Asset Forfeiture Fund reports.

<sup>76</sup> John Burton, interview by author, November 2014.

<sup>77</sup> Other POST certified courses on forfeiture have been offered since the 1990s by the California District Attorneys Association.

<sup>78</sup> California Narcotics Officers Association announcement of training class, 2013.

<sup>79</sup> Interview with Kent Shaw, September, 2014.

<sup>80</sup> Ibid

Asked for its explanation for the forfeiture trend in California, the federal Justice Department says it is “not in a position to respond.”<sup>81</sup>

### Budget Cuts

This growing awareness by law enforcement of the financial advantages of federal forfeitures combined with increased collaboration with federal agencies has come at a time of growing fiscal hardship for police departments in the state.

California and its municipalities faced dire economic straits in the mid-2000s, which led to cuts to state and local law enforcement. The State’s Bureau of Narcotic Enforcement was eliminated, along with state funding for many task forces.

In a number of cities identified in this report, forfeiture revenue spiked immediately after police budgets were cut.

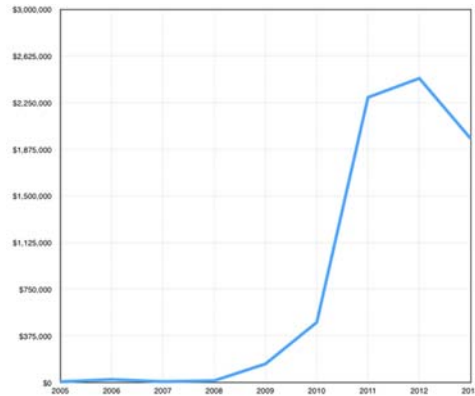
**Figure 6:** After several years of considerable growth, the Beverly Hills Police Department budget<sup>82</sup> was cut by almost \$4 million in fiscal year 2010. The next year the department’s federal forfeiture revenues, more than quadrupled. The city’s DOJ equitable sharing income went from \$7,637 in FY 2007 to \$2,292,323 in FY 2011.

**Figure 7:** Irwindale collected virtually no federal forfeiture revenue through much of the last decade, a time when police budgets were on the rise. Since fiscal year 2009, General Fund appropriations for the police have been cut in three out of five fiscal years. Meanwhile, the police department has significantly increased its forfeiture revenue.

**Figure 8:** After steady increases over several years, La Verne’s police budget was cut in fiscal year 2010. The following year, La Verne’s federal forfeiture income nearly quadrupled.

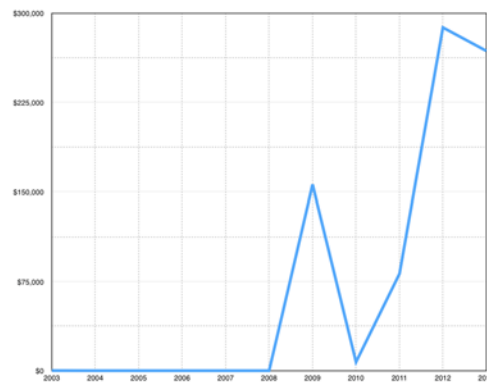
In fiscal year 2011 general fund appropriations for the city of Gardena police department saw their deepest cuts in close to a decade, the following year forfeiture revenue nearly doubled. After growing steadily for several years, West Covina’s police budget was cut by over \$1 million in fiscal year 2011; the following year the department’s forfeiture take increased five-fold.

**Figure 6: Beverly Hills DOJ equitable sharing revenue FY 2005-2013**



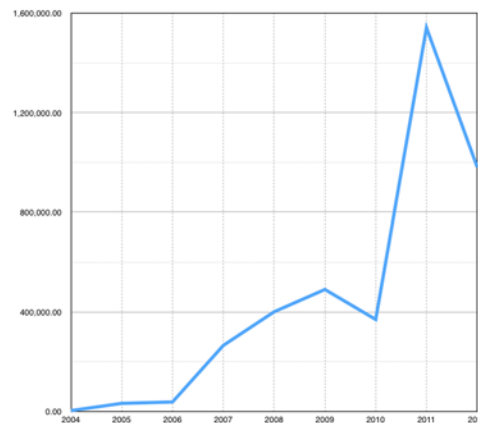
Source: Beverly Hills Annual Equitable Sharing Agreement and Certification Forms

**Figure 7: Irwindale DOJ equitable sharing revenue FY 2003-2013**



Source: Irwindale Annual Equitable Sharing Agreement and Certification Forms, and federal justice department forfeiture data.

**Figure 8: La Verne DOJ equitable sharing revenue FY 2004-2012**



Source: La Verne Annual Equitable Sharing Agreement and Certification Forms.

<sup>81</sup> Peter Carr, Federal Justice Department, correspondence with author, October 2014.

<sup>82</sup> In this and the following examples, budgets refer to General Fund appropriations for the police department.



## 2) Los Angeles County: The heart of the matter

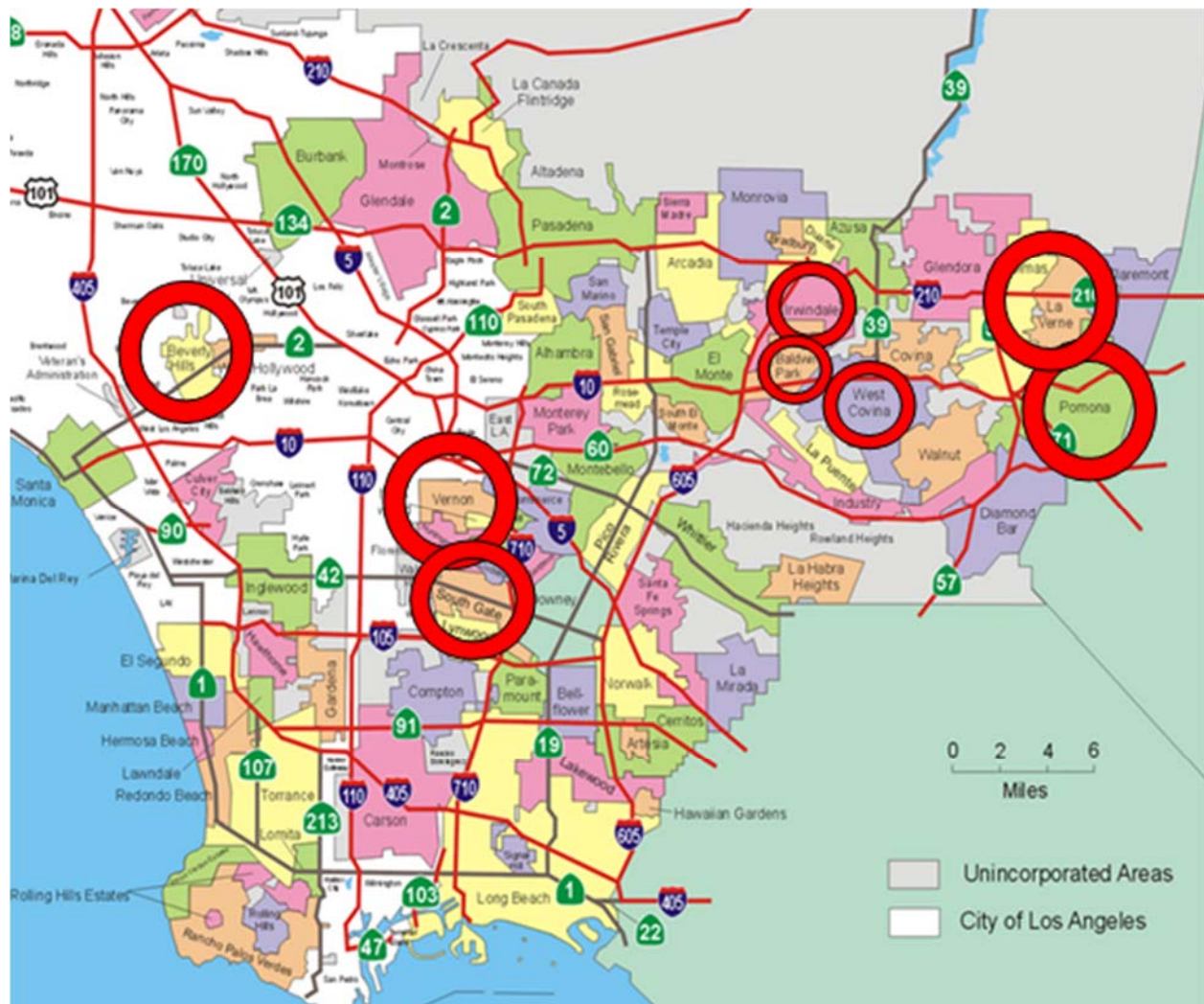
While overall federal forfeiture revenue to California has grown dramatically since 2005, a closer examination has uncovered a cluster of small cities in Los Angeles County that are seizing vastly disproportionate amounts of money relative to their size. Using federal Department of Justice data, equitable sharing payments were calculated for the more than 300 California law enforcement agencies that have received such funds since fiscal year 2006.<sup>83</sup>

That year was chosen because it is the year that federal forfeiture revenue increased sharply relative to state forfeiture revenue, and since which it has grown steadily.

The largest per capita recipients of this revenue are a cluster of police departments in small-to-medium sized towns and cities in Los Angeles County.

**Figure 9:** The jurisdictions shown account for eight of the top ten cities in the state in terms of per capita federal Department of Justice civil asset forfeiture revenue in all of California.

**Figure 9: Map of Los Angeles County**



<sup>83</sup> There are two distinct sources of equitable sharing payments, the Department of Justice and the Treasury Department. The ranking is based on equitable sharing revenue data published by the Justice Department's Forfeiture Fund. The DOJ's fund accounts for more than 88 percent of all equitable sharing payments to California and more than 75 percent nationally in the period studied. It is also the forfeiture program most associated with the domestic drug war,

accounting for all forfeitures conducted by local police in partnership with U.S. Attorneys, the Drug Enforcement Administration, the Federal Bureau of Investigation, HIDTAs (High Intensity Drug Trafficking Areas) and most multi-jurisdictional task forces. When factoring in per capita forfeiture revenue from both the Treasury and Justice Department funds, the list of top cities in California looks very similar.

**Figure 10: Top 10 cities in California per capita DOJ federal forfeiture revenue FY 2006-2013**

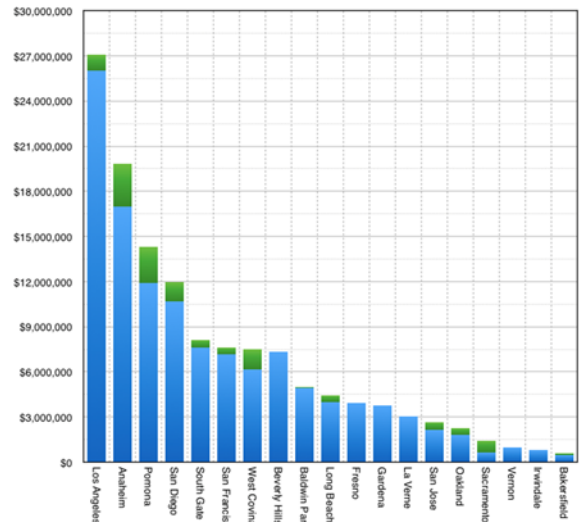
City	County	Population	Forfeiture Revenue	Per Capita Forfeiture Revenue	Per Capita Forfeiture Revenue per year
Vernon	LA	112	\$986,275	\$8806	\$1,101.00
Irwindale	LA	1,422	\$802,856	\$565	\$71.00
Beverly Hills	LA	34,109	\$7,321,005	\$215	\$27.00
El Centro	Imperial	42,598	\$4,555,024	\$107	\$13.00
La Verne	LA	31,063	\$3,014,653	\$97	\$12.00
South Gate	LA	94,396	\$7,622,071	\$81	\$10.00
Pomona	LA	149,058	\$11,888,230	\$80	\$10.00
Baldwin Park	LA	75,390	\$4,925,018	\$65	\$8.00
Calexico	Imperial	38,572	\$2,496,740	\$65	\$8.00
Gardena	LA	58,829	\$3,759,425	\$64	\$8.00
West Covina	LA	106,098	\$6,181,838	\$58	\$7.00
<b>Source:</b>	Equitable Sharing Agreement and Certification reports	and Census data			
<b>Note:</b>	The small first nations community of Los Coyotes (pop. 288)	is ranked 9th for per capita forfeiture. However, it was not included	because it only reported DOJ forfeiture revenue in 2 years since FY 2000	and the total amount of money involved is quite small (\$21,451).	

These cities stand out not only for the large amounts of federal forfeiture revenue they collect relative to their size, but also in terms of absolute forfeiture revenue.

**The police forces of the eight L.A. County cities on this list serve a combined population of 444,379 people and made \$43,342,294<sup>84</sup> in asset forfeiture between fiscal year 2006 and 2013. That is 60 percent more than what the LAPD collected, despite serving a combined population that is eight times smaller than Los Angeles.**

Many of these cities by themselves have seized considerably more money than some of California's largest cities over the last eight years.

**Figure 11: Total federal forfeiture revenue of 10 most populous cities in California and select L.A. County cities FY 2006-2013**



Source: Federal Justice Department and Treasury Department annual Asset Forfeiture Fund reports.

- Irwindale has collected \$802,856 in forfeited assets; Bakersfield, which is 244 times bigger, has collected \$571,796.
- La Verne has collected \$3,015,283; Oakland, which is twelve times more populous, has collected \$2,281,597.
- Despite having a population that is more than five times smaller than Sacramento's, and more than ten times smaller than San Jose's, Baldwin Park has collected \$5,011,449, more than San Jose (\$2,651,112) and Sacramento (\$1,416,500) combined.
- South Gate has seized \$8,091,207; San Jose, whose population is ten times greater, has federal forfeiture revenues of \$2,651,112.
- Pomona's forfeiture revenues of \$14,302,274 exceed the combined forfeiture revenues of Oakland (\$2,281,597), Fresno (\$3,958,725), Long Beach (\$4,410,910) and Bakersfield (\$571,796), whose total populations are more than 11 times greater than Pomona's.

The police departments of Vernon, Irwindale, Beverly Hills, La Verne, Pomona, and West Covina declined requests for interviews. The cities that did respond provided a number of explanations for why they collected so much forfeiture revenue.

<sup>84</sup> The comparisons between the forfeiture revenue of these cities and the LAPD, and the police forces of some of California's most populous cities encompass forfeiture revenue from both Treasury and Justice Department equitable sharing.

Fred MacFarlane, a spokesperson for the city of Vernon, says the city's high per capita forfeiture revenue is a reflection of the fact that, while the city has fewer than 120 official residents, it houses numerous companies that employ 55,000 people, and it sits astride important transportation corridors.<sup>85</sup>

MacFarlane and Gardena Police Lieutenant Steve Prendergast<sup>86</sup> also explain that their respective police departments participate in task forces. These task forces sometimes make large seizures, and a portion of those assets flows back to the police departments.

South Gate Police Captain Darren Arakawa says that high forfeiture revenues reflect the city's longstanding commitment to drug enforcement.<sup>87</sup>

### 3) Municipal Failure to Abide by Forfeiture Regulations

Further review reveals that most of these cities are failing to abide by federal Justice Department forfeiture guidelines designed to “promote and maintain the integrity of the equitable sharing program.”<sup>88</sup> Among these guidelines:

#### 3a. General Guidance

- Recipients are prohibited from budgeting future forfeiture revenue.
- Recipients are prohibited from “supplanting.” In other words, if a law enforcement agency collects a certain amount of revenue one year, the city can't cut the police budget by the same amount the following year.

#### 3b. Bookkeeping and Internal Controls

- Recipients must maintain copies of all DAG-71 forms. These forms describe every federal forfeiture a police department participates in (either involving a federal agency, or a local forfeiture which the police want a DOJ agency to “adopt”). The form details what was seized, the law enforcement agency's level of contribution toward the seizure, the value of the seized property and the share of its value the local agency is requesting from the federal government.

<sup>85</sup> All quotes and statements attributed to Fred MacFarlane from interview and correspondence with author, 2014.

<sup>86</sup> All quotes and statements attributed to Steve Prendergast from interview with author, 2014.

<sup>87</sup> All quotes and statements attributed to Darren Arakawa from interview with author, 2014.

<sup>88</sup> Asset Forfeiture and Money Laundering Section, U.S. Department of Justice, *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*, 2009, <http://www.justice.gov/usao/ri/projects/esguidelines.pdf>.

#### 3c. Reporting and Audit Requirements

- Recipients must ensure that their forfeiture expenditures are audited as part of the annual “Single Audit,” which all cities that spend at least \$500,000 in federal grants in one year must undergo. Every city identified in this study spent enough federal money to be required to file a Single Audit report in or more years.
- State and local law enforcement agencies must retain all records relating to their participation in the Equitable Sharing Program for a period of at least five years.

#### 3d. Anticipating Forfeiture Revenue

With the exception of Irwindale, every city anticipated future forfeiture revenue in one or more of the fiscal years reviewed. Anticipated annual revenues ranged from five figure sums at the low end (Vernon, Beverly Hills, West Covina), to hundreds of thousands of dollars (La Verne, Baldwin Park), to over a million dollars (South Gate) and as high \$3.1 million in the case of Pomona.

Pomona has the distinction of routinely appropriating more money from its forfeiture fund than it has in reserve – suggesting that its police must then seek and seize hundreds of thousands of dollars to make up for already appropriated funds.

For example, at the beginning of fiscal year 2006, Pomona's budget reported that its federal asset forfeiture fund had a balance of \$526,079. However, it committed to spending \$1,772,275 in forfeiture funds that year, creating a shortfall of \$1,246,196, which it expected to make up for, and did, by collecting over \$1,400,000 in forfeiture revenue the following year. The same thing happened in fiscal years 2005, 2007, 2009, 2010, 2014 and 2015 when the city appropriated more money than it had in the forfeiture fund by anywhere from \$297,725 to \$933,831 in a given year.

Pomona's Police Department refused a request for an interview. The city's Finance Department said that expenditures were not all made at the beginning of the fiscal year and that purchases are delayed when funds are not available.

Lieutenant Stephen Prendergast, who supervises Gardena's narcotics detectives, said he was not aware that the city was anticipating future forfeiture revenue. Finance Department and Police Department officials in other cities identified in this report downplayed concerns over this breach of the Justice Department's rules. These figures were described as estimates.



**But Kent Shaw, the Deputy Director of the Division of Law Enforcement for the state, contends that anticipating forfeiture revenue is counter to state forfeiture law and constitutes a “dangerous budgetary process.”**

**“I would hope that no jurisdiction really does that, only because asset forfeiture is such a variable commodity,” says Shaw.<sup>89</sup>**

### ***3c. Supplanting***

Another state and federal budgeting regulation aimed at preventing policing for profit is the prohibition on supplanting. Supplanting is when a law enforcement agency collects a certain amount of asset forfeiture revenue one year and the city cuts the police budget by the same amount the following year. There is evidence that supplanting may have occurred in some of these cities.

In fiscal year 2010, the Vernon Police Department made \$186,072 in federal DOJ forfeiture revenue, only to have its budget cut the following year by \$185,378.

In fiscal year 2012, the Irwindale Police Department made \$287,874 in forfeiture revenue; its budget was cut the following year by \$285,658.

In fiscal year 2010, La Verne Police Department made \$369,954 in DOJ forfeitures; the next year its budget was cut by \$331,771.

City officials said the similarities between forfeiture revenue one year and the size of budget cuts the following year were coincidental or reflected overall budget cuts not limited to the police department. Federal Justice Department spokesperson Peter Carr says that, while supplanting is forbidden, it is not easy to detect. “Administering this requirement can be difficult in periods where budget reductions are common. In determining whether supplantation has occurred, the Justice Department examines various factors including the law enforcement agency’s budget as a whole and its relation to other fiscal measures undertaken by the governing body.”<sup>90</sup>

A 2004 study looked at how local governments react when their police departments collect more forfeiture revenue from one year to the next.

**The authors found that local governments respond by capturing some of that revenue by cutting the police budget – precisely what is forbidden by federal regulations.**

<sup>89</sup> Interview with Kent Shaw, September, 2014.

<sup>90</sup> All quotes of Peter Carr from correspondence with author, October 2014.

This practice was more commonly applied to federal forfeiture revenue, and more likely in times of fiscal difficulty.<sup>91</sup>

### ***3f. Lack of Transparency and Inconsistent Fiscal Statements***

There are three primary sets of fiscal records in which cities report annual forfeiture revenues, expenditures and fund balances.

- The municipal budget;
- The Equitable Sharing Agreement and Certification form, which all participating cities must submit to the Justice Department annually; and
- The Comprehensive Annual Financial Report, which is audited by an independent auditor.

There is a fourth document, also reviewed by auditors, known as the “Single Audit”, in which cities are required by the federal government to report federal forfeiture expenditures. The Single Audit is a set of guidelines for independent auditors as part of the mandatory audit of all cities or entities that spend at least \$500,000 in total federal funds in the course of a fiscal year.

**The two cities with the highest per capita forfeiture revenue in California, Vernon and Irwindale, do not report forfeiture revenue or how they spend it in their budgets.**

In the case of Vernon, this is in spite of the city’s own budgetary guidelines, which, until 2010, stipulated that, “the budget includes authorized expenditures and estimated revenues of the General Fund, Special Revenue Funds and Capital Projects Funds.”<sup>92</sup>

Vernon’s budget contains information on other special revenue funds, but not federal forfeiture revenue. This represents over \$1.25 million collected by the police department in recent years, which are unaccounted for in the city’s municipal budget. Nor are these revenues and expenditures reported in the Comprehensive Annual Financial Report the city submits to auditors.<sup>93</sup>

Vernon was nearly dis-incorporated in 2010 in the wake of scandals involving municipal finances and elections. A 2012 audit by the state auditor faulted Vernon, finding “the city’s budget process lacks transparency”<sup>94</sup> and that

<sup>91</sup> Baiker, Katherine and Mireille Jacobson, “Finders Keepers: Forfeiture Laws, Policing Incentives and Local Budgets,” Working Paper 10484, National Bureau of Economic Research, May 2004.

<sup>92</sup> City of Vernon 2010 Comprehensive Annual Financial Report p.63

<sup>93</sup> The only information on federal forfeiture revenue contained in the Comprehensive Annual Financial Report is the fund balance.

<sup>94</sup> Audit of Vernon, California State Audit Report 2011-131, June 2012. p.3



the budget failed to include figures required by the City's own charter.<sup>95</sup>

To the extent that the city keeps a record of its forfeiture activities, what it reports annually to the federal Justice Department doesn't always accord with what it reports to auditors as part of its federal Single Audit. In fiscal year 2013, the forfeiture fund expenditures Vernon declared to auditors were \$140,546 less than the sum it reported to the Justice Department.

This is not limited to Vernon, but is a widespread phenomenon. Some examples:

In fiscal year 2012, the forfeiture revenue fund reserves that **West Covina** reported in its municipal budget were roughly \$420,000 less than what it reported to the Justice Department. Meanwhile, the amount of expenditures from the forfeiture fund reported in the budget was more than \$400,000 lower than what the city reported to auditors.

**La Verne's** reporting of forfeiture revenue and expenditures is inconsistent. In fiscal year 2009, the amount of forfeiture revenue the city reported spending to the DOJ was nearly \$1 million less than what it reported in the single audit.

**Baldwin Park's** budget overstated federal forfeiture revenue in fiscal year 2012 by more than \$100,000 relative to its filings with the Justice Department, but understated expenditures by nearly \$200,000. In fiscal year 2009, the city reported forfeiture fund expenditures in its budget that were nearly half a million dollars lower than what they reported to the Justice Department.

City officials with West Covina and Vernon said that these discrepancies were a result of differences in the timing of when these fiscal records were compiled. La Verne's finance director said the different numbers were due to the fact that each fiscal document is prepared differently. However, the forfeiture figures in the financial records of other cities examined in this report were far more consistent.

In other cases, there were discrepancies in forfeiture figures within individual documents.

In **Pomona's** filings with the federal Justice Department for each of the four years between fiscal year 2005 and fiscal year 2008, the forfeiture fund balance at the end of the fiscal year did not match the balance at the beginning of the ensuing fiscal year. More than \$100,000 in debits from the forfeiture fund was unaccounted for.

The forfeiture fund balance that **Baldwin Park** reported to the federal Justice Department at the beginning of fiscal year 2010 had nearly \$75,000 missing.

### ***3g. Failure to report forfeiture spending to independent auditors***

The principal means by which the Justice Department ensures the annual auditing of the use of federal forfeiture revenue by police departments is through the Single Audit.

The DOJ's guidelines state:

*State and local law enforcement agencies that receive federally shared cash, proceeds, or tangible property are required to perform an audit consistent with the Single Audit.*<sup>96</sup>

**Irwindale** failed to report its spending of forfeited assets as part of its Single Audit in fiscal year 2010. In fiscal year 2006, **Pomona** spent nearly \$1 million from its forfeiture fund, none of which it reported in its Single Audit.

A review of Single Audit filings by **Baldwin Park** since fiscal year 1998 shows that the city has never reported any expenditures of DOJ equitable sharing revenue. That's over \$5 million dollars' worth of unaudited spending. When Baldwin Park's Finance Director was asked about this ongoing failure to report expenditures, an attorney for the city replied that the city had a new finance director, who was not in a position to discuss what had occurred before his tenure. The attorney did not know whether or not the city was aware of its failure to abide by federal auditing rules.<sup>97</sup>

### ***3h. Failure to retain records***

The Justice Department requires that cities retain all records relating to federal forfeiture activities for five years. These include Equitable Sharing Agreement and Certification forms and DAG-71 forms.

The city of **South Gate** only had three years' worth of equitable sharing agreement and certification forms. Meanwhile the city of **La Verne** only had DAG-71 forms for approximately one sixth of the forfeitures in which the city participated over the past five years.

**Despite the fact that DAG-71 forms must be filed with the federal government within 60 days of a seizure, most of them were filed many months beyond the DOJ's own deadline.**

<sup>96</sup> <http://www.justice.gov/usao/ri/projects/esguidelines.pdf>, p. 28

<sup>97</sup> Correspondence and conversation between author and Baldwin Park City Attorney, November, 2014.

<sup>95</sup> Ibid, p. 183

**Figure 12: Frequent Breaches of Federal Forfeiture Regulations: Nine-City Score Card**

City	Anticipating forfeiture revenue	Possible supplanting	Failure to perform Single Audit of forfeiture expenditures	Large discrepancies between forfeiture data in different fiscal records	Failure to retain records associated with federal asset forfeiture (see note 2 below)
Vernon	X	X		X	
Irwindale		X	X		
Beverly Hills		1			
La Verne	X	X		X	X
South Gate	X				X
Pomona	X		X	X	
Baldwin Park	X		X	X	
Gardena	X		X		
West Covina	X			X	
Notes	1) Beverly Hills included future forfeiture revenue in its municipal budget one year only and it was roughly equivalent to the amount of interest it earned on its forfeiture reserves the previous year.			2) The extent of this problem is not entirely known as only Gardena and La Verne responded to Public Records Act requests for DAG-71 forms.	

It is impossible to gauge how commonly cities fail to retain such records or to file them on time. Most of the other cities identified in this report refused California Public Records Act requests for copies of DAG-71 forms.

**A review of the fiscal and forfeiture records of the cities in Los Angeles County with the highest levels of per capita federal Justice Department forfeiture revenue found that one or more of these cities violated every one of the aforementioned guidelines in recent years.**

**4) What is the Benefit of Civil Asset Forfeiture?**

The research for this report sought to ascertain the effect of aggressive pursuit of civil asset forfeiture on the availability of drugs in these communities, or other public safety benefits, such as a decrease in drug-related crime.

Baldwin Park Police Captain David Reynoso says asset forfeiture is a by-product of drug arrests and drug seizures. His city does not measure the street value of annual drug seizures, but he says “over the years it’s hampered the ability of drug dealers to transport drugs, to sell drugs.”<sup>98</sup> Reynoso says that forfeiture aids law

enforcement by providing revenue for police equipment. But he says the “biggest success from the asset forfeiture program” has been an at-risk juvenile boot camp program called Pride, which the Department has run for 11 years using forfeiture funds.

For his part, Captain Darren Arakawa of the South Gate Police Department says he has never heard forfeiture described as a way to reduce the availability of drugs. Asked to describe the law enforcement benefits of forfeiture, Arakawa says it is part of their larger goal of getting drugs off the street, but he conceded that, despite South Gate’s longstanding focus on drug enforcement, police were only “seizing a fraction of what’s out there.”<sup>99</sup>

When asked about the law enforcement benefits resulting from asset forfeiture, Gardena Police Lieutenant Steve Prendergast cited increased police resources.<sup>100</sup>

“We use that money to buy equipment to further the war on drugs.” Prendergast says. The money has paid for “equipment to keep our officers safe, bullet-proof vests, Tasers, weapons, you name it.”

<sup>98</sup> All quotes of David Reynoso from interview with author, July 2014.

<sup>99</sup> All quotes of Darren Arakawa from interview with author, November 2014.

<sup>100</sup> Steve Prendergast from interview with author, 2014

Prendergast did not know whether drugs were more or less available in Gardena as a result of the police department's forfeiture activities. However he stressed that many of the police department's seizures occurred outside city limits as they were conducted by officers assigned to task forces.

In an extensive review of news articles and hundreds of municipal documents, not a single piece of data was uncovered that indicates any impact of civil asset forfeiture programs on the availability of drugs, outdoor drug markets or related crime in these communities. To the extent that municipal documents quantify the law enforcement outcomes of asset forfeiture, they refer to the pecuniary benefits to cities, while making unsubstantiated and vague statements about public safety. Vernon and La Verne each have examples of those cities' own dubious claims about the benefits of forfeiture:<sup>101,102</sup>

### **5) Law Enforcement Resources Devoted to Asset Forfeiture**

While there are no data that show any impact on the drug supply, it is possible to measure the resources these police departments devote to asset forfeiture.

Perhaps not coincidentally, the growth of civil asset forfeiture in California over the second half of the last decade coincided with a fiscal crisis in California and staff cuts to some police departments.

For several cities, the pursuit of forfeitable assets has come at a time when their police forces are undergoing considerable staffing cuts. This trade-off heightens concerns about the potential for civil asset forfeiture to pull police resources away from more urgent public safety mandates.

**In fiscal year 2010, the city of South Gate cut its police force by 11 positions, while increasing the staff assigned to asset seizure from two to four.<sup>103</sup>**

**West Covina's** Police Department has a serious staffing difficulty, according to the city's own assessment. In 2010 the municipal budget noted that, "several years ago, West Covina was already ranked in the lowest 4% nationally in its police officer to citizen population standing (in 2006)," and was "over 55 officers behind the L.A. County average."<sup>104</sup>

Despite these already low numbers, West Covina cut 37 sworn officer positions between 2007 and 2013. According to the city's budget for fiscal year 2014, police "understaffing is both a public safety and customer service issue, as residents have to wait longer for responses to non-emergency calls, and supervisory span of control has been reduced."<sup>105</sup>

**Baldwin Park** police officers participated in more DOJ seizures than any other city in this report. This occurred as the number of full time sworn officers was cut by 12% between 2008 and 2013. The city's police officer to citizen ratio is below state and federal averages.

The city of **La Verne** cut the number of sworn police officer positions by 20 percent between fiscal year 2006 and fiscal year 2014. By fiscal year 2011, the City Manager was pointing out the effects of these cuts on police services. "Elimination of vacant police officer positions will require suspending operations of the Traffic Division which will affect ability to fulfill targeted traffic enforcement and fewer officers per shift will limit ability to complete proactive patrol and cause an increase in response times." These cuts, the City Manager said, had led the Police Department "to operate patrol at the minimum acceptable staffing level on most shifts."<sup>106</sup>

Paradoxically, as La Verne cut its police force to the bone, it assigned more of its remaining officers to drug task forces – from two in fiscal year 2005, to five by fiscal year 2010. As of fiscal year 2014, the department had four officers assigned to drug task forces.

**As the number of patrol officers has been reduced to the bare minimum, police emergency response times in La Verne more than doubled between 2004 and 2013.<sup>107</sup>**

But the increased allocation of police resources to asset forfeiture paid off in other ways: the department's revenue from DOJ equitable sharing grew steadily from \$3,220 in fiscal year 2004, to \$1,541,197 in fiscal year 2011. That sum represents a 17.8 percent increase in the police budget over what was appropriated by the City Council that year.

### **6) Law Enforcement Methods and Procedures**

**Police are seizing post drug sale cash using paid informants and conducting joint forfeitures to evade state law.**

<sup>101</sup> Matrix Consulting Group, City of Vernon, CA, Final report of the police department staffing analysis, 2013, p.38.

<sup>102</sup> La Verne Budget FY 2005, p.168.

<sup>103</sup> South Gate FY 2010 municipal budget

<sup>104</sup> West Covina FY 2011 municipal budget

<sup>105</sup> West Covina FY 2014 municipal budget

<sup>106</sup> La Verne FY 2011 municipal budget

<sup>107</sup> La Verne FY 2008 and FY 2014 municipal budget

Overwhelmingly, the cities identified in this report conducted joint forfeitures, meaning that federal law enforcement agencies were involved in some aspect of the seizure process. Joint forfeitures occurred through multijurisdictional drug task forces, to which some of the cities assign police officers. Such task forces include the Los Angeles Interagency Metropolitan Apprehension Crime Task Force (L.A. IMPACT), the Southwest Border Initiative, the Criminal Racketeering Asset Forfeiture Team (CRAFT), and the California Multi-Jurisdictional Methamphetamine Enforcement Team (Cal-MMET). Some cities also have divisions dedicated to drug enforcement. Officers in these units collaborate with federal agents, mostly the Drug Enforcement Administration, through more informal processes.

Almost without fail police are seizing cash and not property. There are likely reasons for this; seizing property costs more. Property must be warehoused and protected and then usually auctioned off and the proceeds divided. Cash, on the other hand, has none of these costs.

All but two cities denied California Public Records Act requests for DAG-71 forms (which describe each forfeiture). Gardena shared redacted forms. Only La Verne provided un-redacted copies. These reports provide a revealing glimpse into the key role played by paid police informants. La Verne provided DAG-71 forms for 55 forfeitures that took place between 2011 and 2014.<sup>108</sup>

Remarkably, every single seizure is described as having taken place in an identical fashion, down to the comma:

“The La Verne Police Department developed the information through the use of a confidential informant. La Verne Police Department personnel performed surveillance during the narcotics transaction, traffic stop once the transaction was completed, transportation, and booking of all suspects involved in the booking and handling of evidence.”

La Verne narcotics officers have gotten forfeiture down to a science wherein confidential informants tip them off to upcoming drug sales from which the police department is systematically pocketing the proceeds, seemingly turning every drug bust into an opportunity for federal funds. It is not known what percentage of these sellers are charged, prosecuted or convicted. To lubricate this well-oiled machine, the informants get a cut of the seized cash.

### **La Verne Police Department has spent over \$1 million of its federal asset forfeiture revenue on informants and “buy money” in the last 3 years for which it provided records.**

This sum represents the largest category of forfeiture spending by the police department.

For its part, West Covina spent over half a million dollars in forfeiture revenue on informants and “buy money” in the last year for which records are available.

Paid informants have long been central to asset forfeiture. In 1992, Cary Copeland, the head of the Department of Justice’s asset forfeiture program, estimated that paid informants were responsible for at least \$120 million in forfeited money over the past two years. “We’re not paying it to them because we like them.” Copeland said. “We’re paying it to them because they put money in the pot.”<sup>109</sup>

Several forfeiture lawyers in California interviewed for this report attest to the fact that the number of federal forfeiture cases they are seeing is on the rise over the past year.

“The traffic stop is a situation where it happens all the time. It’s very, very common particularly on interstates,”<sup>110</sup> says Paul Gabbert, a veteran forfeiture lawyer based in Santa Monica.

## **7) Oversight by State and Federal Departments of Justice**

As this investigation has uncovered, a review of just nine cities turned up numerous cases in which recipients of federal forfeiture revenue failed to abide by the federal Justice Department’s rules.

According to the Justice Department, these guidelines are binding. Noncompliance may subject recipient agencies to one or more of the following sanctions:

- Denial of an agency’s request for its share of forfeiture revenue;
- Temporary or permanent exclusion from further participation in the equitable sharing program;
- Civil enforcement actions in U.S. District Court for breach of contract; and/or
- Where warranted, federal criminal prosecution for false statements under 18 U.S.C. § 1001, fraud involving theft of federal program funds under 18 U.S.C. § 666, or other sections of the criminal code, as applicable.

<sup>108</sup> This represents a fraction of the actual number of forfeitures in which the city participated, but the police department failed to retain all the forms as required by DOJ regulations.

<sup>109</sup> Brazil, Jeff, “Informants Make out Like Bandits” *Orlando Sentinel*, August 4<sup>th</sup>, 1992

<sup>110</sup> Interview by author of Paul Gabbert, July 2014



The Justice Department said it did not keep track of how many times any of these sanctions have ever been imposed.<sup>111</sup>

Based on the available evidence, there is no indication that any of these sanctions or any other penalty has been applied to the cities in question.

This lack of accountability may have something to do with the Justice Department's conflicting roles when it comes to equitable sharing. On one hand, it is required to ensure that state and local police departments abide by rules designed to prevent policing for profit and other abuses of forfeiture. On the other hand, its mission is to promote the growth of civil asset forfeiture – despite the knowledge that police departments have come to depend on forfeiture revenue.

It may be that these two mandates are incompatible.

The Asset Forfeiture Program's 2008-2012 Strategic Plan states:

***The expansion of resources from the Asset Forfeiture Fund... and appropriated monies is a critical cornerstone of this Plan.***<sup>112</sup>

*Goal 4.3: Develop partnerships with state and local law enforcement agencies to expand the use of asset forfeiture.*<sup>113</sup>

*Expanding and enhancing partnerships with state and local law enforcement agencies is essential to the growth of the Program.*<sup>114</sup>

Just as law enforcement agencies in some states have come to rely on federal forfeiture revenue, so too does the federal government rely on local law enforcement to keep money flowing to the Federal Asset Forfeiture Fund.

Until Holder's recent actions, federal law enforcement agencies were encouraged to adopt local seizures – especially in states whose forfeiture laws limit the profit motive or improve due process – as the second line of this paragraph from the Justice Department's 2013 Asset Forfeiture Manual seems to suggest:

*Forfeiture is one of the most effective weapons in the law enforcement arsenal and its use should be encouraged. In many areas of the nation, effective use of forfeiture requires a willingness*

<sup>111</sup> Peter Carr, correspondence with author, October 2014.

<sup>112</sup> U.S. Department of Justice, Asset Forfeiture Program *National Asset Forfeiture Strategic Plan 2008-2012*, January 2008. <http://www.justice.gov/criminal/afmls/pubs/pdf/strategicplan.pdf>, p. 25.

<sup>113</sup> *Ibid.*, p. 49.

<sup>114</sup> *Ibid.*, p. 50.

*on the part of federal law enforcement agencies to adopt state and local seizures for federal forfeiture whenever appropriate.*<sup>115</sup>

While there are certain criteria guiding which seizures federal agencies can adopt (e.g. minimum values, type of property), agencies have historically been given much leeway. Among the grounds for federal adoption contained in the 2007 Asset Forfeiture Policy Manual was if “state laws or procedures are inadequate or forfeiture experience is lacking in the state system with the result that a state forfeiture action may be unfeasible or unsuccessful.”<sup>116</sup>

**Indeed, Justice Department officials have explicitly encouraged local law enforcement to seek federal adoption of seizures as a way of evading state law.**

The Missouri constitution stipulates that forfeiture revenues must be distributed to schools. When local law enforcement agencies in Lafayette County held on to forfeited assets, the school district sued and the state Supreme Court ruled in its favor. A few days after the ruling, the U.S. attorney for the Western District of Missouri, Jean Paul Bradshaw II, wrote law enforcement agencies, encouraging them to send state forfeiture cases to the U.S. Justice Department. “I know that all of you in law enforcement are in desperate need for additional financial resources,” Bradshaw wrote, explaining that police could request federal adoption of their forfeiture cases. “As most of you know, the money we share through our forfeiture program goes [directly] to the state or local law enforcement agency,” Bradshaw wrote.<sup>117</sup>

The Justice Department is amply aware that – contrary to the principle that police departments should not rely on forfeiture revenue – many have. As they point out in their 2007 Asset Forfeiture Policy Manual:

*...the explosive growth of sharing has created new management challenges. State and local agencies are increasingly dependent upon sharing proceeds.*<sup>118</sup>

But instead of addressing the problem, as a matter of policy the Justice Department thwarts efforts by state and local authorities to end this dependence by limiting the profit motive. Any jurisdiction that requires some or

<sup>115</sup> U.S. Department of Justice, Asset Forfeiture Program, *Asset Forfeiture Policy Manual* (2013), p. 42.

<sup>116</sup> U.S. Department of Justice, Asset Forfeiture Program, *Asset Forfeiture Policy Manual* (2007), p. 114.

<sup>117</sup> Forbes, Daniel, “Did Ashcroft ‘Look the Other Way’ as Missouri Governor?” *The Progressive Review*, January 18, 2001, [http://www.alternet.org/story/10358/did\\_ashcroft\\_percent22look\\_the\\_other\\_waypercent22\\_as\\_missouri\\_governor](http://www.alternet.org/story/10358/did_ashcroft_percent22look_the_other_waypercent22_as_missouri_governor)

<sup>118</sup> U.S. Department of Justice, Asset Forfeiture Program, *Asset Forfeiture Policy Manual* (2007), p. 117.

all of equitable sharing revenue to be distributed to the general fund is automatically banned from participating.

*Department of Justice policy requires shared monies and property to be used for law enforcement purposes. Sharing will be withheld from any state or local law enforcement agency where state or local law, regulation, or policy requires federal equitable sharing funds to be transferred to non-law enforcement agencies or expended for non-law enforcement purposes.*

DOJ Guide to Equitable Sharing.<sup>119</sup>

All the while, the Justice Department supports police public relations efforts promoting civil asset forfeiture. As part of its plan to expand the use of federal asset forfeiture by state and local police, the 2008-2012 Strategic Plan includes the following goal:

*Develop an awareness campaign for state and local law enforcement agencies to help them communicate the value of asset forfeiture as a tool for improving public safety and benefiting their communities*

### **7a. Federal DOJ: Audits of Police Departments and Equitable Sharing**

The Justice Department's Asset Forfeiture and Money Laundering Section reviews the Equitable Sharing Agreement and Certification forms that police departments must file every year.

There are several other ways in which the DOJ conducts more in-depth audits.

The Justice Department's Office of the Inspector General completed 55 audits between October 1999 and October 2014.<sup>120</sup> The Justice Department's Office of Justice Programs had coordinated 49 reviews of cities that had been flagged in the Single Audit process as of October 2014.<sup>121</sup>

With more than 9,200 law enforcement agencies participating in the DOJ's equitable sharing program between fiscal years 2003 through 2011<sup>122</sup>, these audits amount to a small fraction of the pool.

Beginning in 2011, a Compliance Review Team has been conducting audits to ensure adherence to federal forfeiture guidelines. As of October 2014, the team had conducted 122 reviews.<sup>123</sup> The Government Accountability Office's most recent audit of the

equitable sharing program reported on the findings of the Compliance Review Team, which concluded, "Participants do not consistently follow requirements to properly account for equitable sharing receipts and expenditures, do not consistently comply with the allowable uses of equitable sharing funds, and do not consistently complete Single Audits as required."

### **Nine out of the 11 agencies sampled failed to comply with one or more of the Justice Department's forfeiture regulations.**<sup>124</sup>

As far as the number of police departments that have been sanctioned for noncompliance with forfeiture guidelines, as noted earlier, the Justice Department says it does not keep track of the figure. While the DOJ has a series of regulations and mechanisms designed to enforce those rules, the question arises: Are they a watchdog or an abettor?

### **7b. California DOJ: Oversight of Asset Forfeiture**

The California Department of Justice does not regulate local law enforcement agencies' participation in federal forfeitures or how they spend the proceeds.

California's rules governing the use of state forfeiture revenue are similar to federal rules. Cities are forbidden from supplanting forfeiture revenue and from anticipating forfeiture revenue. However the state Justice Department does not provide oversight or enforcement of these rules. Its statutory responsibility is limited to publishing an annual report detailing how much each law enforcement agency in California has earned from state forfeiture. As of mid-2014, the Department had not published a report since 2011. The missing reports were subsequently published in the late summer of 2014.

The California District Attorneys Association is responsible for training law enforcement agencies to comply with the state's forfeiture regulations. Law enforcement agencies are required to send officers for training on civil asset forfeiture. District attorneys can refuse to accept forfeiture cases from cities that have not kept up to date with training. While this investigation did not examine whether police departments comply with state forfeiture guidelines, given that many of the rules are quite similar to federal guidelines, the question of state compliance remains open.

<sup>119</sup> Asset Forfeiture and Money Laundering Section, U.S. Department of Justice, *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*, 2009, p. 3.

<sup>120</sup> Correspondence with DOJ spokesperson Peter Carr, October 2014.

<sup>121</sup> Ibid.

<sup>122</sup> Government Accountability Office "Justice Assets Forfeiture Fund: Transparency of Balances and Controls over Equitable Sharing Should be Improved", July, 2012.

<sup>123</sup> Correspondence with DOJ spokesperson Peter Carr, October 2014.

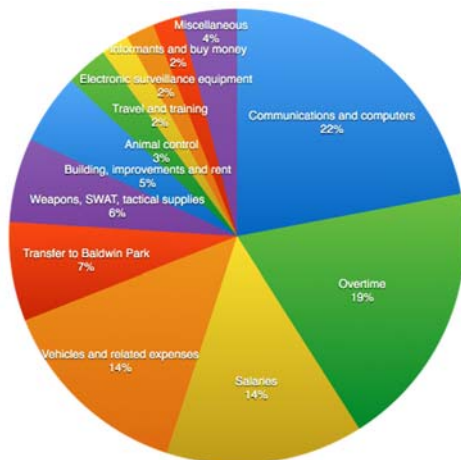
<sup>124</sup> Government Accountability Office July, 2012.

## Addendums 1-9: Spotlight on City Findings

While there were some differences between cities, the largest categories of forfeiture revenue expenditure were overtime, communications and computers, the purchase and maintenance of police cars, and informants and “buy money”. Federal regulations allow state and local agencies wide discretion in what law enforcement expenses equitable sharing revenue can be used for. The principle limitation is that departments cannot use these funds to pay for the salary of law enforcement personnel.<sup>125</sup>

### Addendum 1: Baldwin Park

Population: 75,390 (2010 census)  
 Federal Justice Department forfeiture revenue 2006-2013: \$4,925,018  
 Annual per capita forfeiture revenue: \$8  
 Statewide rank: 8  
 Federal Justice Department forfeiture revenue spent 2005-2013: \$ 5,195,352



### Key Findings

Baldwin Park participated in 565 seizures between 2008 and 2013, **far outpacing the other cities** in this investigation.<sup>126</sup> This occurred as the size of the police department’s full-time staff was cut 18% between 2007 and 2013.

**The city has failed to submit its forfeiture revenue expenditures for auditing**, as required by federal DOJ regulations, every single year **since at least fiscal year 1998. This represents over \$5 million worth of unaudited spending.**

<sup>125</sup> Except for up to one year in the case of an officer hired to replace another officer who has been assigned to a drug task force.

<sup>126</sup> Each item seized in the course of one event is recorded as a separate forfeiture.

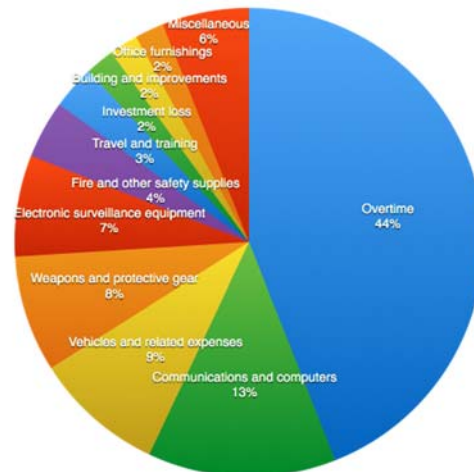
Every year the City of Baldwin Park anticipated **future forfeiture revenue in its budget**, the sums ranged from \$55,000 to over \$300,000.

In the Baldwin Park police department’s filings with the Justice Department for fiscal year 2010, **\$74,617 was unaccounted for.**

There were **significant discrepancies in fiscal reporting on the forfeiture program across different financial documents.** For example for the fiscal year ending June 30 2012, the forfeiture fund balance the city reported to auditors in the Comprehensive Annual Financial Report was nearly \$475,000 greater than what it reported in its annual filing with the Justice Department.

### Addendum 2: Beverly Hills

Population: 34,109 (2010 census)  
 Federal Justice Department forfeiture revenue 2006-2013: \$7,321,005  
 Annual per capita forfeiture revenue: \$27  
 Statewide rank: 3  
 Federal Justice Department forfeiture revenue spent 2005-2013: \$ 3,081,004  
 Forfeited property acquired: 1 Lexus LS 460, 1 Subaru Impreza



### Key Findings

While the Justice Department stipulates that cities are not to view equitable sharing as an alternate source of funding, in Beverly Hills **vast increases in forfeiture revenue have coincided with big budget cuts.**

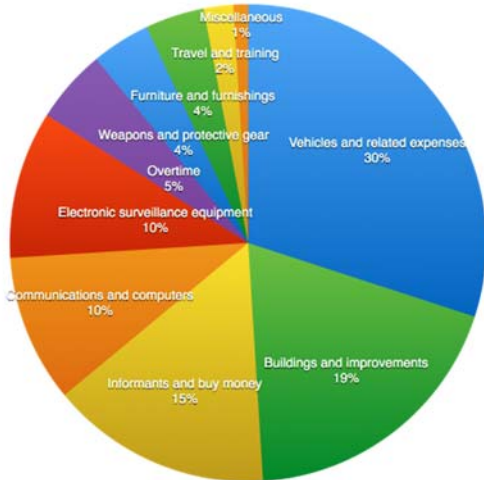
After several years of considerable growth, general fund appropriations for **the Beverly Hills police department budget were cut by almost \$4 million in fiscal year 2010. The next year the department’s federal forfeiture revenues, more than quadrupled.**

The city's DOJ equitable sharing revenues went from \$7,637 in fiscal year 2007 to \$2,292,323 in fiscal year 2011.

Beverly Hills' high levels of per capita civil asset forfeiture revenue **have not translated into reductions in the city's property crime rates**, which are 28% higher than the state average. While California's property crime rate fell by 20% between 2005 and 2013, Beverly Hills' property crime rate grew 14%.

**Addendum 3: Gardena**

Population: 58,829 (2010 census)  
 Federal Justice Department forfeiture revenue 2006-2013: \$3,759,425  
 Annual per capita forfeiture revenue: \$8  
 Statewide rank: 10  
 Federal Justice Department forfeiture revenue spent 2005-2013: \$2,646,192  
 Forfeited property acquired: 1 Dodge Magnum, 1 Dodge Ram



**Key Findings**

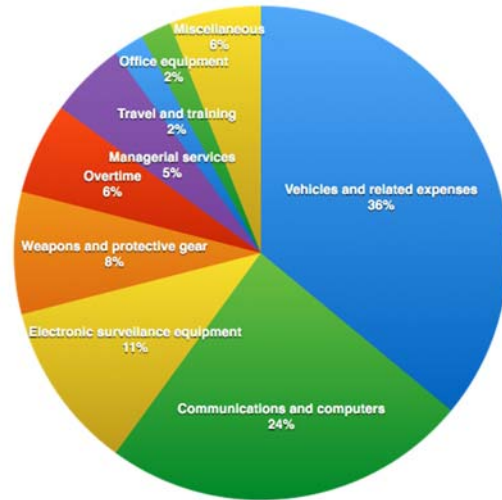
While the federal government warns that forfeiture should not be seen as a means to generate revenue, money from seizures spiked following consecutive budget cuts. In fiscal year 2009 the police department collected \$102,638 from DOJ forfeitures. Following back to back cuts to the police budget in FY 2010 and 2011, DOJ equitable sharing **revenue grew to reach \$1,886,075 in 2012 – an 18-fold increase over 3 years.**

Prior to FY 2010, Gardena **failed to abide by the federally mandated annual audit** of how it spends its forfeiture revenue.

Gardena anticipates future forfeiture revenue in its budget; the sums have increased from \$178,100 in FY 2011 and 2012, to \$516,500 since FY 2013.

**Addendum 4: Irwindale**

Population: 1,422 (2010 census)  
 Federal Justice Department forfeiture revenue 2006-2013: \$802,856  
 Annual per capita forfeiture revenue: \$71  
 Statewide rank: 2  
 Federal Justice Department forfeiture revenue spent 2009-2013: \$410,429  
 Forfeited property acquired: 1 GMC Yukon SUV



**Key Findings**

Irwindale's municipal budgets **contain no record of asset forfeiture revenues or expenditures.** This amounts to \$800,783 in revenue and \$410,429 in spending undocumented over 5 years.

In fiscal year 2010, Irwindale **failed to report equitable sharing expenditures to auditors** in its Single Audit report as required by federal regulations.

**Cuts in police budgets have been associated with increases in how much police are seizing from people.** Between 2003 and 2009, the city's police budget grew considerably. In 5 of those 7 years the police department collected no DOJ equitable sharing revenue. The average annual forfeiture revenue for that period was \$21,767. In contrast, between 2009 and 2013 **the police department budget was cut in 3 out of 4 years.**

The department collected forfeiture revenue every year and average annual **DOJ forfeiture revenue grew more than 7-fold.**

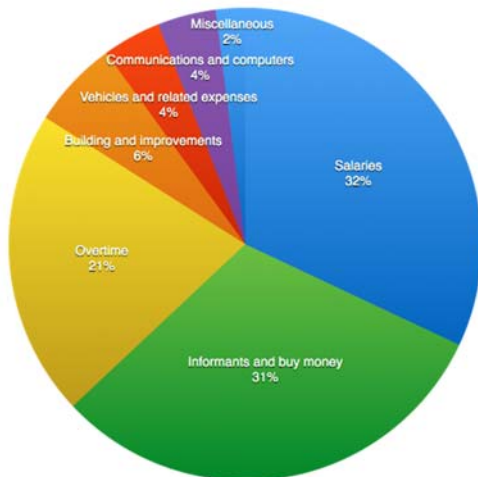


In a case of **possible supplanting**, cuts in general fund appropriations for the police budget in FY 2013 (\$285,658), were nearly equivalent to forfeitures revenue the previous year (\$287,874). This size of this cut was not reflected in the size of overall cuts to general fund appropriations.

Unlike other cities in this report, a considerable percentage of federal forfeitures (40% between 2008 and 2013) **began as seizures by Irwindale police officers with no involvement of federal agencies**. These cases were then handed over to the Federal Justice department. The process, known as adoption, allowed Irwindale to circumvent California forfeiture law, which contains better due process protections and has greater limits on how much of the seized property goes into police coffers. In the face of mounting opposition to this practice, the Attorney General ended adoption of state and local forfeitures in January of 2015.

**Addendum 5: La Verne**

Population: 31,063 (2010 census)  
 Federal Justice Department forfeiture revenue 2006-2013: \$3,014,653  
 Annual per capita forfeiture revenue: \$12  
 Statewide rank: 5  
 Federal Justice Department forfeiture revenue spent 2004-2012: \$ 3,561,703  
 Forfeited property acquired: 1 Jeep Grand Cherokee



**Key Findings**

**46% of La Verne’s federal seizures** between 2008 and 2013 were conducted **without a warrant – the highest of any city in this investigation.**

Increases in forfeiture revenue coincided with budget cuts. After at least 5 consecutive years of budget increases, the police budget was cut by over \$500,000 in FY 2010. The following year, **La Verne’s federal forfeiture income nearly quadrupled**. The amount was **equivalent to 18% of police budget appropriations.**

The La Verne PD participated in the **second highest number of DOJ seizures** – 338 between 2008 and 2013.

The DOJ requires police departments to keep all forfeiture-related records for 5 years. La Verne **had less than 1/5<sup>th</sup>** of the reports detailing the seizures it undertook in that period. These reports must be filed with the DOJ within 60 days of the seizure, however **most were sent months after the federal deadline expired.**

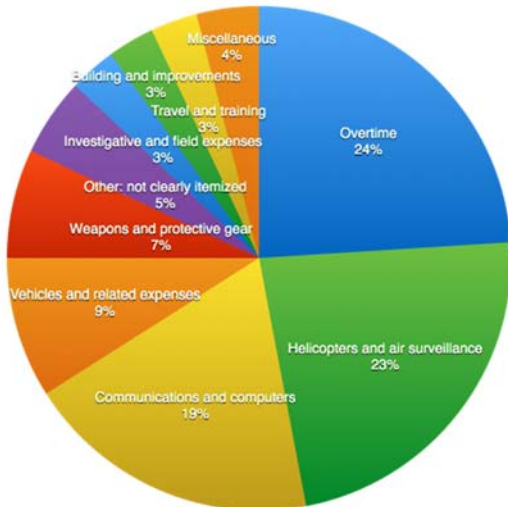
These reports detail 55 forfeitures between 2011 and 2014. **Every single forfeiture is** described as having taken place in an identical fashion. Confidential informants tip off police officers to upcoming **drug sales from which the police department is systematically pocketing the proceeds**. In turn, informants are paid a large share of the seized cash. La Verne PD has spent over \$1 million of its federal forfeiture revenue on **informants and “buy money”** in the last 3 years for which it provided records. **This represents the largest category of forfeiture spending by the police department.**

Since 2009 **the city has anticipated future forfeiture revenue** in its budget every year, from \$250,000 to \$700,000. To help collect forfeiture revenue, the **department increased the number of officers it assigned to drug task forces from 2 in FY 2005 to 5 by FY 2010 (the current number is 4)**. This occurred **as the number of sworn police officers was cut by 20%** between FY 2006 and FY 2014. Meanwhile average **police emergency response times increased** from 1.55 minutes in 2006 to 3.6 minutes by 2013.

Reported forfeiture figures are not consistent in fiscal documents that cover the same fiscal year. For example in FY 2009 federal DOJ forfeiture fund expenditures were reported as \$1,482,679 in the Single Audit report but only \$490,583 in the Equitable Sharing Agreement and Certification Form submitted to the Justice Department.

### Addendum 6: Pomona

Population: 149,058 (2010 census)  
 Federal Justice Department forfeiture revenue  
 2006-2013: \$11,888,230  
 Annual per capita forfeiture revenue: \$10  
 Statewide rank: 7  
 Federal Justice Department forfeiture revenue spent  
 2004-2013: \$ 11,587,659  
 Forfeited property acquired: 1 Nissan Armada SE, 1  
 Honda Accord LS, 1 Volvo S60, 1 Infiniti G35, 1 Ford  
 Freestar SE, 1 Nissan Altima



### Key Findings

Pomona recorded the **second highest rate of warrantless DOJ seizures (39%)**, between 2008 and 2013.

Pomona **anticipated future forfeiture revenue**, the amounts ranged from **\$1,618,017 to over \$3 million**. The city **appropriated more money from its forfeiture fund than it has in reserve** placing added **pressure on police to raise revenue by seizing cash**. Every year the Pomona police department was able to seize sufficient money to make up for the over-commitment of forfeiture funds in its budget.

- In FY 2005 the city appropriated \$1,817,288 from the forfeiture fund, but the fund only had \$1,519,563 in it.
- In FY 2006 the city appropriated **\$1,246,196 more from the forfeiture fund than it held in reserve**.
- In FY 2007 the city's appropriation from the forfeiture fund exceeded what was in the fund by \$603,754.
- In FY 2009 the city appropriated \$1,426,072 from the forfeiture fund – **\$830,422 more than was in the fund**.
- In FY 2010 the city appropriated \$528,126 more from the forfeiture fund than it held in reserve.

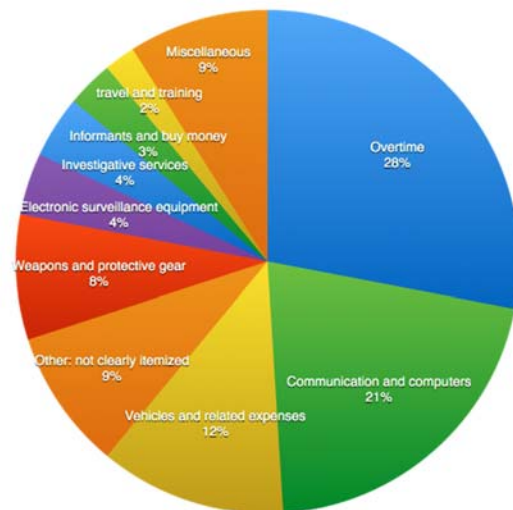
- In FY 2014 municipal appropriations from the forfeiture fund left close to a **\$500,000 shortfall**.
- In FY 2015 the city appropriated **\$2,561,994 from the forfeiture fund** despite it **only having an estimated available balance of \$1,628,163**.

Pomona failed to report any forfeiture spending in its Single Audit report for FY 2006 as required by federal regulations, leaving **\$980,462 in expenses unaudited**.

Every fiscal year between 2005 and 2008, the **amount of money held in the fund at the end of one fiscal year did not match the amount on the first day of the ensuing fiscal year in the city's filings with the DOJ**. In total \$106,425 was missing.

### Addendum 7: South Gate

Population: 94,396 (2010 census)  
 Federal Justice Department forfeiture revenue  
 2006-2013: \$7,622,071  
 Annual per capita forfeiture revenue: \$10  
 Statewide rank: 6  
 Federal Justice Department forfeiture revenue spent  
 2011-2013: \$ 2,494,555  
 Forfeited property acquired: 1 Chrysler 300C, 1 Toyota  
 Tacoma Truck



### Key Findings

Asked why South Gate has some of the highest per capita asset forfeiture revenue in California, a senior member of the city's police force responded that the city has "always had an emphasis on drug enforcement, there is so much drugs here," adding "we dedicate an unusual amount of people to narcotics enforcement."

The focus on drug enforcement raises questions in light of other facts. The city has a **violent crime rate that is 31% higher than the state average**, and a **property crime rate that is 6% higher than the state average**. And the community of South Gate has relatively few police officers relative to the population to address these problems. In 2013, the city had **0.72 full-time sworn officers per 1,000 residents, more than three times fewer than the national average** of 2.3 officers per 1000 residents.

The police force was cut from 144 personnel in FY 2009 to 117 in 2012. **As the police department shed overall staff it increased the number of officers assigned to asset seizure.** In FY 2010, 11 personnel were cut from the force while two positions were added to asset seizure efforts.

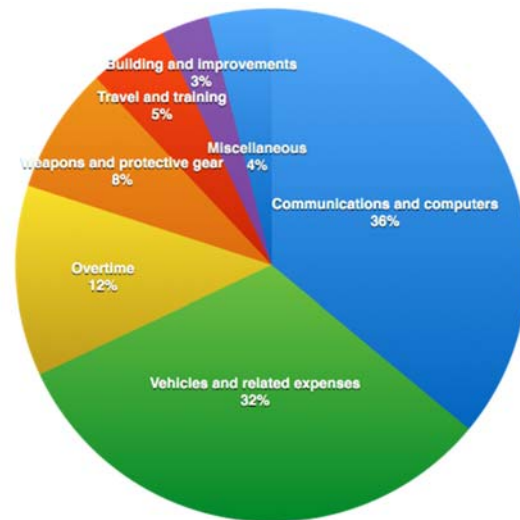
The high level of resources dedicated to drug enforcement has yielded considerable cash for the police department in recent years but it's had a negligible effect on rates of violent crime and property crime. While **California as a whole has seen significant drops in its rates of violent crime and property crime between 2005 and 2013**, in South Gate those rates remained almost flat.

Every year South Gate anticipates how much revenue it will earn the following year. **The anticipated revenue has tended to grow.** In FY 2008 the city expected to collect \$230,000 the following year, by FY 2013 it projected revenues of \$1.2 million from forfeitures the following year.

South Gate failed to keep records related to its participation in federal forfeiture for five years as required by the federal Department of Justice.

### Addendum 8: Vernon

Population: 112 (2010 census)  
 Federal Justice Department forfeiture revenue 2006-2013: \$986,275  
 Annual per capita forfeiture revenue: \$1,101  
 Statewide rank: 1  
 Federal Justice Department forfeiture revenue spent 2005-2013: \$ 1,190,820  
 Forfeited property acquired: 1 Toyota Camry, 1 Toyota Sequoia



### Key Findings

Vernon **doesn't report forfeiture revenue or expenditures in its annual budgets.** This despite the fact that until 2010, Vernon's own budgetary guidelines stipulated, "the budget includes authorized expenditures and estimated revenues of the General Fund, Special Revenue Funds and Capital Projects Funds." Vernon's budgets contain such data on some special revenue funds, but not federal forfeiture revenue. In the period reviewed by this report, this represents **over \$1,000,000 in police revenue not documented in the city's budget.**

Vernon was nearly disincorporated in 2010 in the wake of scandals involving municipal finances and elections. A 2012 audit by the state auditor faulted Vernon, finding "the city's budget process lacks transparency" and that the budget failed to include figures required by the City's own charter. Forfeiture revenues and expenditures are also absent from the financial accounts the city submits to auditors as part of its Comprehensive Annual financial Report.

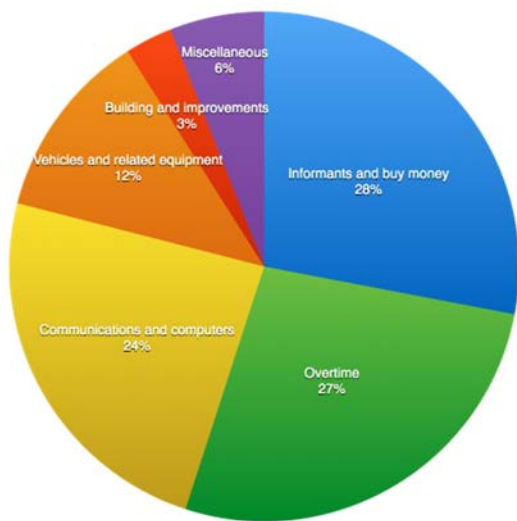
Contrary to federal guidelines, Vernon reported **anticipated future forfeiture revenue** in its budget in fiscal years 2004, 2005, 2007, 2008, and 2009.

**In a case of possible supplanting** in fiscal year 2010, the Vernon police department collected \$186,072 in federal DOJ forfeiture revenue, only to have its budget cut the following year by \$185,378. Supplanting is hard to pinpoint because it is possible the cuts would have happened anyway. Indeed in FY 2011 overall General Fund appropriations were cut by nearly 15%.

**The figures reported by the city to forfeiture were not consistent between the different documents in which these figures are reported.** For example in the Single Audit for FY 2013, DOJ equitable sharing expenditures were reported as \$106,818, while in the Equitable Sharing Agreement and Certification form the sum was \$247,637.

**Addendum 9: West Covina**

Population: 106,098 (2010 census)  
 Federal Justice Department forfeiture revenue 2006-2013: \$6,181,838  
 Annual per capita forfeiture revenue: \$7  
 Statewide rank: 11  
 Federal Justice Department forfeiture revenue spent 2004-2012: \$2,329,579



**Key Findings**

According to federal guidelines forfeitures should not be regarded as a source of income. In West Covina forfeiture income surged in the wake of budget cuts to the police department. After growing for several consecutive years, general fund appropriations for West Covina’s **police budget were cut by over \$1 million in FY 2011.** The following year, the department’s **forfeiture take more than quadrupled.** In fiscal years 2011, 2012 and 2013, the police budget was cut a combined \$1,677,134. In that same period, the department received \$5,529,409 from DOJ equitable

sharing, more than making up for the budget cuts. The amount of DOJ **forfeiture revenue** police collected **in those 3 years as budget appropriations were shrinking** was more than **7 times greater than what the department collected from forfeitures in the 8 preceding years, a time when police budgets were growing.**

**West Covina has undergone considerable reductions to police staff in recent years.** Between 2007 and 2013, the department lost 37 sworn positions. “Understaffing is both a public safety and customer service issue,” according to the city’s FY 2014 budget, which states that “residents have to wait longer for responses to non-emergency calls, and supervisory span of control has been reduced.”

**This raises questions about the share of personnel the city devotes to drug enforcement.** In 2014 the police department had as many officers assigned to its Special Enforcement Team (which does narcotics enforcement, surveillance and Task Force work) as were assigned to its Crimes Against Persons Unit, which investigates homicide, robbery, sex crimes, assault, weapons violations and victims services. The Special Enforcement Team had more staff than were assigned to the unit covering property crime, forensics, fraud and ID theft.

The sums the city reports with regards to forfeiture income, expenditures and balances vary considerably between different documents. For example in FY 2012, the forfeiture fund expenditures reported in the city budget were over \$400,000 lower than those reported in the Single Audit.

West Covina anticipates forfeiture revenue, but the sums are modest, usually around \$7,000.

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