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Civil Asset Forfeiture in Florida: Policies and Practices

at a glance

Civil asset forfeiture is law enforcement's seizure and potential transfer of ownership of real or personal property that is used or attempted to be used in criminal activity. Once assets are seized, a law enforcement agency may file a claim for forfeiture of the assets in civil court, and once forfeited, those assets become the property of the agency.

There is currently no requirement for local law enforcement agencies to report seizures and forfeiture activity under state law. According to survey data obtained from about half of local law enforcement agencies in Florida, these agencies make thousands of seizures annually, mostly related to drug offenses. Vehicles and currency are the most commonly seized assets, with real property rarely seized. While most assets seized under state law are forfeited, many assets are returned to the owners, either in whole or part. Only 16% of the seizure actions are contested by a request for an adversarial hearing, and 1% end in a civil trial.

Assets seized under state law can be used by law enforcement agencies for a variety of law enforcement-related purposes, such as providing additional equipment or expertise. Some forfeited assets are donated to substance abuse and crime prevention programs. Responding agencies reported spending over \$12 million in forfeited assets during Fiscal Year 2013-14. The Legislature may wish to consider revising state law to require law enforcement agencies to report information on the frequency and extent of civil asset forfeiture in Florida. In addition, the Legislature may want to consider reforms that other states have pursued to increase protections for property owners and limit law enforcement use of forfeiture proceeds.

Scope

As directed by the Legislature, OPPAGA reviewed the current civil asset forfeiture policies and practices of Florida's local law enforcement agencies related to the Florida Contraband Forfeiture Act.¹

Background

Civil asset forfeiture is the seizure and potential transfer of ownership of real or personal property that is used or attempted to be used in criminal activity. Forfeiture seeks to deprive criminals of ill-gotten gains, prevent the further illicit use of property, and to deter illegal behavior. This civil remedy is available to law enforcement agencies under both state and federal law. The use of civil asset forfeiture was limited until the 1980s, when Congress amended federal law and greatly expanded the use of the practice as a law enforcement tool to combat the flow of illegal drugs into and around the country. Many states, including Florida, followed suit and enhanced state civil asset forfeiture statutes as a tool for law enforcement agencies within the state.²

The Florida Contraband Forfeiture Act sets forth requirements regarding the seizure of contraband by law enforcement agencies, the processes related to the civil forfeiture of those

¹ Sections [932.701-932.706](#), *F.S.*

² Florida first enacted civil asset forfeiture in 1974.

assets, and the regulations related to the use of those assets by the seizing agencies. In Florida, as in other states, property can be forfeited either criminally or civilly. However, unlike criminal forfeiture, which is linked to the conviction of the individual in a criminal proceeding, a seizure under the Florida Contraband Forfeiture Act does not require an arrest or conviction, and any related criminal proceedings or determinations are neither relevant nor admissible in a civil forfeiture action.³ Under the act, law enforcement may seize any contraband article, such as personal property including currency, motor vehicles, or real property that is used, or attempted to be used, in the commission of a felony, or acquired with proceeds gained by a violation of the act.^{4,5}

Statute limits law enforcement seizure of real property until a judicial hearing determines that

³ Civil forfeiture involves an action taken against a person's property or assets, also known as an action in rem. The property owner in a civil asset forfeiture case is not entitled to an attorney if he cannot afford one. Neither the state attorney nor the public defender, who may be involved in the criminal case against the defendant, participate in the civil case against the owner's property.

⁴ Real property is defined in Florida statutes as land, buildings, fixtures, and all other improvements to land.

⁵ Per s. [932.701\(2\)\(a\)5](#), *F.S.*, forfeiture may also involve the proceeds of illegal activity or items purchased with the proceeds of illegal activity.

probable cause exists to justify the seizure.⁶ However, all other property, such as vehicles and currency, can be seized based on law enforcement's determination of probable cause. One example of a seizure occurs when law enforcement, during a traffic stop of a vehicle, becomes suspicious of the driver or occupants, and asks permission to search the vehicle. The officer may discover narcotics or large quantities of cash in the vehicle. If the officer has probable cause or reasonable grounds to believe that the cash came from the sale of narcotics, then that cash is subject to seizure. If the officer has probable cause to believe that the vehicle was used to transport narcotics, then the vehicle is also subject to seizure.⁷

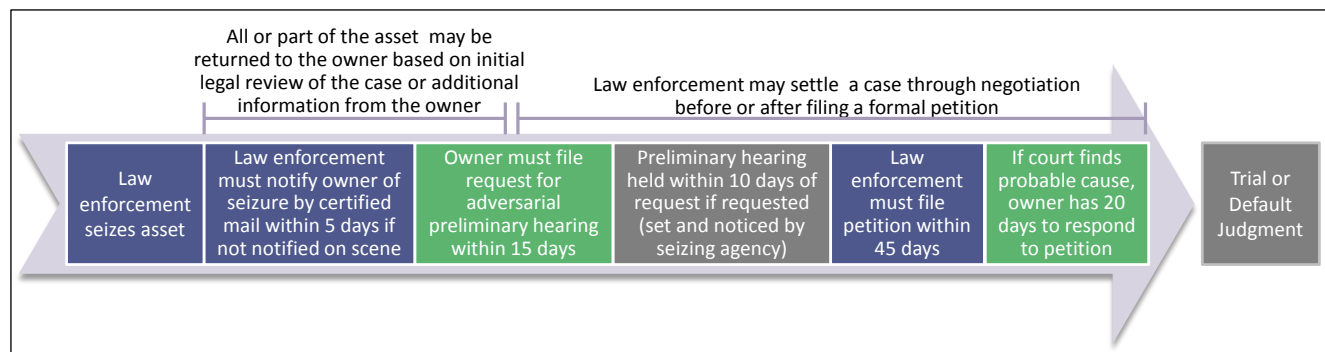
After the seizure, attorneys for the law enforcement agency manage the legal processes related to the civil forfeiture of assets. As shown in Exhibit 1, statutes delineate the process and time frames that law enforcement agencies and property owners must follow. However, there are many points in the process at which the case may be settled without further court proceedings.

⁶ Section [932.703\(2\)\(b\)](#), *F.S.*

⁷ Contraband seizures can also occur as part of long term investigations of criminal activity. These investigations may lead to search warrants in which law enforcement identifies property or assets that can be subject to seizure.

Exhibit 1

Statutes Provide Time Deadlines That Law Enforcement Agencies and Property Owners Must Meet During the Forfeiture Process



Source: Florida statutes and OPPAGA survey of local law enforcement agencies.

After a seizure occurs, the seizing law enforcement agency is required to identify and provide notice of seizure to any owner, entity, bonafide lienholder, or person in possession of the property.⁸ This notice informs the owner of his or her right to request an adversarial preliminary hearing before the court to review probable cause. If an adversarial preliminary hearing is held, the court reviews the verified affidavit and any other supporting documents and takes testimony to determine whether there is probable cause to believe that the property was used, is being used, was attempted to be used, or was intended to be used in violation of the Florida Contraband Forfeiture Act. If the court finds probable cause, it will authorize the seizure or continued seizure of the contraband. A copy of the findings of the court is given to any person entitled to notice.

If the owner does not request an adversarial preliminary hearing, the seizing law enforcement agency is required to file a complaint in the civil division of the circuit court within 45 days of the seizure, requesting the court to issue a judgment of forfeiture.⁹ Upon receipt of the complaint, the court must make a probable cause determination before the forfeiture complaint can be served on the owner. If the owner contests the seizure, Florida statutes require that any trial on the issue of forfeiture be decided by a jury, unless such right is waived.¹⁰ At trial, the agency must demonstrate by clear and convincing evidence that the seized asset meets the requirements of the Florida Contraband Forfeiture Act.¹¹

The law also allows the seizing agency to enter a settlement agreement on the case prior to the conclusion of the forfeiture action. In such

settlement agreements, the seized assets are typically split, with some assets returned to the owner and some forfeited to the law enforcement agency. In a settlement agreement, the owner typically waives their right to contest the forfeiture of the remaining assets.¹²

After the forfeiture of assets is made through a settlement agreement or through final judgment by the court, the seizing law enforcement agency becomes the owner of the assets. It may retain the property for the agency's use; sell the property at a public auction or by sealed bid to the highest bidder; or salvage, trade, or transfer the property to any public or nonprofit organization.¹³ Remaining proceeds and interest, after all liens and debts are paid, are deposited into a special law enforcement trust fund established by the law enforcement agency's local governing body, typically a county or city commission.¹⁴ State law allows agencies, with the approval of local governing bodies, to spend or use forfeited assets. However, these assets cannot be used for normal agency operating expenses. In addition, the law requires agencies that acquire over \$15,000 from state seizures within a fiscal year to donate at least 15% of the proceeds to substance abuse and crime prevention programs.

In addition to the state contraband law, agencies can also participate in asset seizures under federal law. Seizures under federal law typically involve cooperative work with federal agencies. When assets are seized under federal law, the federal agency takes responsibility for the forfeiture proceedings. Forfeited assets are then proportionally shared with local agencies that participated in the seizures and deposited

⁸ Interests of bona fide lienholders, property held jointly by a husband and wife, interests in property held jointly, and rental cars may not be forfeited under s. [932.703](#), *F.S.*

⁹ Section [932.701\(12\)\(c\)-\(d\)](#), *F.S.*

¹⁰ Section [932.704\(3\)](#), *F.S.*

¹¹ Florida is one of only six states that places the burden of proof in civil asset forfeiture cases with the government. Many states require the owner of the seized asset to prove that the asset was not being used in criminal activity.

¹² If a settlement agreement is reached, s. [932.704\(7\)](#), *F.S.*, requires that the settlement be reviewed by the court, unless such review is waived by owner.

¹³ If the property has a lien and is sold, proceeds are distributed in this order: payment of balance due on any lien preserved by the court in the forfeiture proceedings; payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property; and payment of court costs incurred in the forfeiture proceeding.

¹⁴ Section [932.7055](#), *F.S.*

into a local trust fund, which is separate from the law enforcement trust fund for assets seized under state law. Florida's contraband forfeiture law is different from federal contraband forfeiture law in several ways, including the nature of the forfeiture proceeding and the regulations regarding the use of forfeited assets. For more information on the federal program, see Appendix A.

While law enforcement agencies are required to report federal seizure and forfeiture activity, there is currently no reporting requirement for actions taken under the Florida Contraband Forfeiture Act.¹⁵ As a result, there is no existing statewide data on the frequency of seizure actions, the value of assets forfeited, or the use of forfeiture funds. In this review, we surveyed local law enforcement agencies to obtain information on these issues as well as on current policies and practices. Specifically, we asked for information on

- **Seizure actions**—when law enforcement takes possession of assets and provides notice to the owner and interested parties;
- **Forfeiture process**—the legal proceedings that lead to a final order of forfeiture and the transfer of ownership of the property to the government; and
- **Use of seized assets**—how local law enforcement agencies use the assets seized.

We received responses from 152 local law enforcement agencies (33 of 67 sheriff's offices and 119 of 223 police departments), an overall

response rate of 52%.¹⁶ We requested data for the last five years as well as specific detailed data for Fiscal Year 2013-14. However, because agencies are not required to track seizure and forfeiture data in a format that matched our survey, the nature of the responses we received varied. For example, some agencies were able to provide most or all of the data we requested, but in many cases, agencies could answer only a portion of the questions. Also, at our request, some agencies provided estimates in lieu of actual numbers if they were too time consuming to obtain.

As a result, the number of seizure actions and values of forfeited assets presented in this report undercount the extent of civil asset forfeiture in Florida. Despite these limitations, the law enforcement agencies that responded to our survey went to considerable effort to provide information that generally describes current local law enforcement practices related to civil asset forfeiture.

Seizure Actions

Local Law Enforcement Agencies Make Thousands of Seizures Annually

Local law enforcement agencies responding to our survey conducted almost 19,000 seizure actions over the past five years, with over 4,000 seizures in the most recent fiscal year. Drug offenses were the most common basis for seizure actions. Most agencies said that all seizure actions during the most recent fiscal year were accompanied by an arrest. Vehicles and currency were the most commonly seized assets. Some agencies have established minimum value limits that must exist before they will proceed with a seizure.

¹⁵ Prior to 2006, any agency that seized or forfeited property under the Florida Contraband Forfeiture Act was required to submit semi-annual reports to the Florida Department of Law Enforcement (FDLE) by April 10 and October 10 each year, documenting their receipts and expenditures. These reports required agencies to specify the type of offense, disposition of the property received, and the amount of proceeds received or expended. FDLE was required to submit an annual report to the criminal justice committees of the Legislature, containing a list of agencies that had failed to meet these reporting requirements. Auditor General [Report No. 2005-042](#) determined that the labor-intensive process used by FDLE to compile the annual reports did not include reasonable procedures necessary to verify data submitted by law enforcement agencies and that the reports did not appear to be used by either FDLE or the Legislature. In 2006, the Legislature eliminated the reporting requirement.

¹⁶ We emailed a link to an online survey to all 67 sheriff's offices and to 223 police department members of the Florida Police Chiefs Association. We did not include college and university police departments in our sample. We also did not include state law enforcement agencies that may also seize and forfeit property.

Responding local law enforcement agencies reported over 4,000 seizure actions in the most recent complete fiscal year. Local law enforcement agencies reported taking almost 19,000 seizure actions under the Florida Contraband Forfeiture Act over the last five fiscal years.¹⁷ (See Exhibit 2.) There was wide disparity in terms of the number of seizure actions reported, ranging as high as 938 seizure actions in Fiscal Year 2013-14. Thirty-one of the responding agencies (25%) reported no seizure actions in Fiscal Year 2013-14, and the median number of seizure actions for that year was six.

Exhibit 2

Agencies Reported Over 18,000 Seizure Actions Under State Law in the Last Five Years

Fiscal Year ¹	Number of Agencies Reporting	Number of Seizures Reported
2010-11	107	4,315
2011-12	111	3,732
2012-13	112	3,780
2013-14	122	4,210
2014-15 ²	114	2,829
Total	122	18,866

¹ The fiscal year is October 1 through September 30.

² For Fiscal Year 2014-15, we asked for data through June 30, 2015.

Source: OPPAGA survey of local law enforcement agencies.

Drug offenses were the most common basis for a seizure action. Agencies were generally unable to provide a specific breakdown of the number of seizure actions by offense type. However, 86% of responding agencies estimated that most or all of their seizures were based on drug offenses. Most agencies reported that other types of offenses, including traffic offenses, property crimes, violent crimes, and economic crimes were the basis for seizure actions in some or none of their seizures. Travelling to have sex with a minor and illegal gambling offenses were some specific offenses mentioned by multiple agencies as other offenses that also served as the basis for seizure actions.

Agencies reported that most seizures occur in conjunction with an arrest. Although state law gives law enforcement the authority to seize assets without making an arrest, only 16% of the responding agencies reported making any seizures without an accompanying arrest in Fiscal Year 2013-14.

Law enforcement officials cited some instances where making an arrest at the time of asset seizure was not possible or appropriate. For example, law enforcement officers may find cash and illegal narcotics at a crime scene but they cannot positively identify the owner. Another situation occurs in ongoing economic crime investigations where the seizure of property or currency being used in the criminal activity may be warranted before the agency is prepared to make arrests. A third example involves situations where owners caught with property subject to seizure are able and willing to provide information on higher level crimes that can lead to later related arrests.

Vehicles and currency were the most commonly seized assets. Under current state law, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the Florida Contraband Forfeiture Act may be seized.¹⁸ Responding agencies reported that seizure actions were more likely to involve the seizure of vehicles than the seizure of currency or personal property. (See Exhibit 3.) Law enforcement agencies reported that personal property items seized included weapons, jewelry, computer equipment, and property used to make, process, deliver, and import or export drugs, such as boats, planes, materials, products, and equipment. Only two agencies reported seizures of real property.¹⁹

¹⁸ Section 932.703(1)(a), F.S.

¹⁹ While vehicles, currency, and personal property can be seized based on law enforcement's determination of probable cause, Florida statute limits seizure of real property until a judicial hearing determines that probable cause exists to justify the seizure.

¹⁷ Since most local governments use an October 1 through September 30 fiscal year, we asked agencies to report their data on that basis. For Fiscal Year 2014-15, we asked for data through June 30, 2015. All references to fiscal year in this report use the October 1 through September 30 time frame.

Exhibit 3 Most Seizure Actions in Fiscal Year 2013-14 Involved Vehicles¹

Type of Asset	Number of Seizure Actions	Percentage of Seizure Actions ²
Vehicle	2,786	68%
Currency	1,362	33%
Personal property	150	4%
Real property	2	0% ³

¹ The fiscal year is October 1 through September 30.

² One seizure action may include more than one type of asset. Therefore, the percentages sum to more than 100%.

³ Real property accounted for 0.05% of seizure actions.

Source: OPPAGA survey of local law enforcement agencies.

The Florida Contraband Forfeiture Act requires that the determination of whether to seize currency be made by law enforcement supervisory personnel.²⁰ We asked agencies what the lowest rank is that could make this decision, and 61% of the agencies responding to the question reported that it was a sergeant. The answers from other agencies varied, with the police chief identified as the deciding supervisor for six of the agencies. We also asked agencies to specify how the decision to seize currency was made when officers found currency during a traffic stop.²¹ More than half of the agencies responding to this question said that a supervisor would be called to the scene to make the seizure decision. An additional 28% said that the supervisor made the determination through phone or radio contact.²²

Some agencies placed minimum limits on the value of seizures. Forty-five agencies reported that they had established a minimum value for currency, vehicles, or personal property to be seized. These minimum limits ranged from \$500 to \$5,000 for currency, \$500 to \$15,000 for vehicles, and \$1,000 to \$5,000 for personal property. Some agencies reported that if the

costs associated with the forfeiture process exceeded the value of the property being seized they would not proceed with the forfeiture. Costs associated with seizures and forfeitures can include storage and preservation of seized assets, attorney and other staff time, and court filing fees.²³ These limits can influence the decision by law enforcement deputies or officers as to whether to seize certain assets, or they can be applied after property has been seized.

Most agencies provide additional training for deputies and officers on civil asset forfeiture. The Criminal Justice Standards and Training Commission establishes the qualifications and standards for law enforcement officers in Florida and sets the curriculum for basic law enforcement training and certification. State law requires that the commission develop a standardized course of training for basic recruits and continuing education to develop proficiency in proceeding under the Florida Contraband Forfeiture Act.²⁴ Currently, the basic training curriculum that officers must take to become certified briefly covers the act. In addition, the Criminal Justice Standards and Training Commission has created a 16-hour specialized training course on contraband forfeiture.²⁵

We asked agencies if they provided internal training on contraband forfeiture to deputies and officers. Of the agencies that responded, 71% said that they did provide training. Twenty-seven percent of these agencies reported that this training was provided annually.

²³ The cost of filing a petition in circuit court is up to \$399 as established by s. [28.241](#), *F.S.*

²⁴ Section [932.706](#), *F.S.*

²⁵ Commission-certified training schools and local law enforcement agencies may offer this course. The commission does not maintain records on how frequently this course is offered or the number of officers who participate in the course. Law enforcement officers may take specialized courses to meet the 40-hour continuing education requirement to maintain certification every four years.

²⁰ Section [932.704 \(11\)\(b\)](#), *F.S.*

²¹ Almost 40% of the agencies responding to our survey estimated that most or all of the seizures in Fiscal Year 2013-14 originated from traffic stops.

²² Four agencies said that the senior deputy or officer on the scene was authorized to make the decision to seize currency.

Forfeiture Process —

Law Enforcement Agencies Must Follow Legal Requirements for Forfeiture of Seized Assets; Many Cases Are Settled Outside of Court

The forfeiture process is managed by legal counsel representing the law enforcement agency. Much of the forfeiture process occurs outside the court process and few seizure actions lead to adversarial hearings or trials, with only 1% of forfeitures contested in a civil trial. All seized assets were eventually forfeited to the local law enforcement agencies in more than one-third of seizure actions, and all assets were returned to owners in 25% of the seizure actions.

The forfeiture process is managed by legal counsel for the law enforcement agencies. Once property has been seized, the law enforcement agency must follow statutory guidelines to resolve the forfeiture action for that property. These guidelines include serving notice on the owner of the seizure, if it was not provided at the time of seizure; holding an adversarial preliminary hearing on probable cause, if requested by the owner; entering into settlement negotiations with the owner, if appropriate; and filing a civil forfeiture claim in the circuit court, if the case is not otherwise resolved. Legal counsel for the law enforcement agency typically assumes control of these processes.

Unlike criminal cases, civil asset forfeiture cases are not assigned to the state attorney for prosecution. Legal counsel works on behalf of the law enforcement agency to seek forfeiture of the assets. Forty-six percent of the agencies responding to this question said that city or county attorneys handled the forfeiture cases, while 21% said that contracted counsel handled the cases. Seventeen percent of the agencies said that the agency's in-house counsel managed forfeiture cases.

Many seizure actions are not contested. The forfeiture of seized property occurs at the end of the civil process that can include hearings and trials. Florida law gives owners of seized property two opportunities to have the action heard by a circuit court. Within 15 days of receiving a notice of seizure, owners may request an adversarial preliminary hearing for the court to review whether the law enforcement agency had probable cause to seize the assets. Then, within 20 days after the agency files a complaint for the forfeiture of the property in civil court, owners may contest the complaint, with the option of going to trial.

During the trial, the seizing agency must demonstrate by clear and convincing evidence that the contraband assets were used in violation of the Florida Contraband Forfeiture Act. The trial presents an opportunity for the property owner to challenge the seizing agency's case. The property owner may argue, for example, that there is no connection between the property seized and the criminal activity or that the property seized is not proportional to the crime alleged. The property owner may also argue that he or she had no knowledge that the property was being used in criminal activity.²⁶

However, survey respondents indicated that few seizure actions lead to adversarial hearings or trials. Responding agencies reported that adversarial hearings were requested for about 16% of the seizure actions, and about 1% of the seizure actions resulted in forfeiture trials. These numbers suggest that a small number of owners challenge the actions brought against their property and that many owners decide to settle their cases, giving up their right to be heard by a judge and jury. Some property owners may be making these decisions without benefit of counsel since there is no right to representation for those who cannot afford it in civil asset forfeiture cases.

²⁶ Section 932.703(8), F.S., provides that an incidental or entirely accidental relationship between the seized property and the underlying criminal offense is an affirmative defense to forfeiture. The section also provides that proportion of the property's value to any other factors must not be considered in determining an affirmative defense.

Seized assets are returned to owners in more than half of the seizure actions. Seizure actions can ultimately lead to one of three outcomes: (1) the agency keeps all of the seized assets, (2) the agency returns all of the seized assets to the owner, or (3) the assets are split between the agency and the owner. For Fiscal Year 2013-14, agencies reported that all of the assets were forfeited in 36% of the seizure actions. (See Exhibit 4.) All assets were returned to the owner in 25% of the seizure actions. When combined with owners who received a portion of their assets back, almost 60% of seizures resulted in the owner receiving at least a portion of the assets back.

Exhibit 4

All Assets Were Forfeited in 36% of the Seizure Actions in Fiscal Year 2013-14¹

Outcome of Seizure Actions	Number of Seizure Actions	Percentage of Seizure Actions
All assets returned to owner	567	25%
Assets split; partially returned to owner; partially forfeited	767	34%
All assets forfeited	818	36%
Still pending ²	107	5%
Total	2,259³	100%

¹ The fiscal year is October 1 through September 30.

² Outcomes were still pending for these cases at the time the agencies responded to our survey in August and September of 2015.

³ The total number of seizure actions in this table reflects the number of seizures for the agencies responding to this question and is therefore different from the total reported in Exhibit 2.

Source: OPPAGA survey of local law enforcement agencies.

Several situations may result in the return of all of the seized assets. The agency may determine after the seizure that a vehicle or property does not meet the agency's established minimum value for seizure, or the agency may determine that the costs of proceeding against the asset would outweigh the value. Additionally, law enforcement may determine that the actual owner of the asset did not know or have reason to know that the asset was being used in criminal activity, that there are liens on the property that restrict their ability to obtain a forfeiture, or that the seized asset is not subject to forfeiture. For

example, several law enforcement officials told us that criminals frequently use rental cars when conducting criminal transactions. The law expressly excludes rental cars from forfeiture actions. Therefore, if law enforcement discovers that a seized vehicle is a rental car, it must be returned to the rental agency.

A portion of the seized assets is likely to be returned if the law enforcement agency reaches a settlement with the property owner. The agency may return a portion of the assets in exchange for the owner giving up his or her right to trial. In a settlement agreement, both the agency and the owner forego the expense and uncertainty of taking the case to trial. Some law enforcement officials told us that it is often expedient to enter a settlement agreement that allows the owner to forfeit most of the asset but recover enough of the seized asset to be able to retain an attorney for the owner's criminal prosecution.

Use of Seized Assets——

Assets Seized Under State Law Are Used for a Variety of Law Enforcement-Related Purposes; Some Are Donated to Public Use

At least \$68 million in assets were forfeited to local law enforcement agencies during the past five years under the Florida Contraband Forfeiture Act. Agencies reported expending over \$12 million in seized assets during Fiscal Year 2013-14. These expenditures were generally approved by the county or city government. A portion of the forfeited assets were donated to substance abuse and crime prevention programs, but agencies varied in the procedures used to distribute funds to these programs. In addition, agencies reported using some of the seized vehicles for temporary use as undercover vehicles or as permanent acquisitions.

When forfeited, assets become the property of the seizing law enforcement agency. Florida statutes provide for the disposition of liens and forfeited property under the Florida

Contraband Forfeiture Act.^{27, 28} The seizing agency may

- retain the property for the agency's use;
- sell the property at a public auction or by sealed bid to the highest bidder; or
- salvage, trade, or transfer the property to any public or nonprofit organization.

Law enforcement agencies are required to receive local government approval to spend forfeited funds, and state law requires that they can only be used for non-operating expenses. Forfeiture proceeds are deposited into a special law enforcement trust fund established by the governing body of a county or municipality. The funds may be appropriated only to the sheriff's office by the board of county commissioners or to the police department by the governing body of the municipality when the sheriff or police chief has certified that the request for funds will be used in compliance with the act.²⁹

Available data shows reporting agencies deposited over \$68 million in assets acquired through the Florida Contraband Forfeiture Act over the past five years; the amount likely is much higher. Agencies responding to our survey reported or estimated deposits into agency forfeiture funds in excess of \$68 million over the past five years. (See Exhibit 5.) Reported data included some large forfeitures in the last two years. For example, one agency reported receiving a single forfeiture of \$3.4 million in Fiscal Year 2013-14.

Exhibit 5

Agencies Reported Depositing Over \$68 Million in Assets Acquired Through the Florida Contraband Forfeiture Act Over the Last Five Fiscal Years

Fiscal Year ¹	Number of Agencies Reporting	Forfeiture Dollars Deposited
2010-11	113	\$10,901,662
2011-12	115	7,950,532
2012-13	115	10,363,579
2013-14	122	18,871,997
2014-15 ²	117	20,584,633
Total	122	\$68,672,405

¹ The fiscal year is October 1 through September 30.

² For Fiscal Year 2014-15, we asked for data through June 30, 2015.

Source: OPPAGA survey of local law enforcement agencies.

This reported data may substantially undercount the amount of forfeiture funds acquired by local law enforcement under state law. About half of the local law enforcement agencies in Florida did not respond to our survey. In addition, several agencies reported that they did not have accurate or complete data for some years. Also, responding agencies may not have been consistent in including or excluding interest earnings in the totals deposited in the forfeiture funds. Finally, some agencies stated that they did not include funds acquired through task force seizures.³⁰

Responding agencies reported spending over \$12 million in assets acquired through the Florida Contraband Forfeiture Act in Fiscal Year 2013-14. Florida agencies responding to our survey said that they spent over \$12 million in forfeiture assets in Fiscal Year 2013-14. While the law expressly states that proceeds and interest from forfeitures may not be used to meet the normal operating expenses of a law enforcement agency, it allows a broad range of possible uses.³¹ If an agency acquires

²⁷ Section [932.7055](#), F.S.

²⁸ If the property has a lien attached and the agency sells the property, the proceeds of the sale are to be distributed in this order: payment of the balance due on any lien preserved by the court in the forfeiture proceedings; payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property; and payment of court costs incurred in the forfeiture proceeding.

²⁹ Section [932.7055\(5\)\(b\)](#), F.S.

³⁰ Joint task force operations involving several law enforcement agencies may make seizures. One task force director told us that it was the practice of that task force for the forfeiture to be processed by one of the agencies in the task force, with the forfeited proceeds distributed among all participating agencies. While the funds from these shared forfeitures go into an agency's forfeiture fund, they may not have complete information on the nature of the seizure.

³¹ Section [932.7055\(5\)\(a\)](#), F.S.

at least \$15,000 within a fiscal year, the agency is required to expend or donate no less than 15% of those forfeiture proceeds for substance abuse and crime prevention programs, specifically including school resource officer, safe neighborhood, or drug education and prevention programs.³² Agencies are also authorized to spend the funds for other law enforcement purposes, specifically including

- providing additional equipment or expertise;
- defraying the cost of protracted or complex investigations;
- purchasing automated external defibrillators for use in law enforcement vehicles; and
- providing matching funds to obtain federal grants.

There is currently no requirement for local law enforcement to report how forfeited funds have been used. In our survey, we asked agencies to report if they spent a portion of their funds on the categories specified in law. Almost four out of five agencies that provided information on how forfeiture funds were used identified substance abuse and crime prevention programs as one of the beneficiaries of seized assets during Fiscal Year 2013-14. (See Exhibit 6.)

Exhibit 6
In Fiscal Year 2013-14, Most Responding Agencies Gave a Portion of Forfeiture Proceeds to Substance Abuse and Crime Prevention Programs¹

Use Category	Percentage of Agencies
Substance abuse and crime prevention programs	79%
Purchase additional equipment	63%
Defray cost of investigations	17%
Provide additional expertise	16%
Provide matching funds to obtain federal grants	9%
Purchase automatic external defibrillators	2%

¹ The fiscal year is October 1 through September 30.

Source: OPPAGA survey of local law enforcement agencies.

Purchasing additional equipment was the most common law enforcement purpose served by fund expenditures. Equipment purchases included surveillance equipment, weapons and ammunition, wound kits, camera systems, and bicycles for bike patrols. Other law enforcement uses reported in the survey included training vehicle rentals and purchases; personnel salaries for school resource officers; task force support; the purchase of uniforms and canines; and the construction of facilities, including a tactical operations center.

Agencies used various procedures for determining which substance abuse and crime prevention programs received donated forfeiture assets. Statute gives local law enforcement agencies discretion to determine which programs will receive the designated proceeds. However, an agency or organization that wants to receive funds must apply to the sheriff or police chief for an appropriation and include with its application a written certification that the funds will be used for an authorized purpose. Responding agencies estimated that they donated \$2.6 million in civil asset forfeiture funds to approximately 480 such programs in Fiscal Year 2013-14.

Law enforcement agencies used various strategies to dispense these funds. For example, while some agencies have a grant program to which programs can apply for funds, other agencies indicated that decisions about the distribution of these funds were made by the agency head or an agency committee. In some agencies, the same program may receive the funds each year.

Law enforcement agencies may use some vehicles. Forfeited vehicles may be sold at auction or by closed bids and the proceeds of the sale deposited in the forfeiture fund. Law enforcement agencies can use forfeited vehicles as a temporary vehicle for undercover operations, or the vehicle can be added to the agency's vehicle inventory.³³ Twelve agencies reported using a total of 56 vehicles seized in

³² We have used the phrase substance abuse and crime prevention programs to refer to this group of statutorily eligible recipients of donated forfeiture funds. There is no requirement in law that these be nonprofit or charitable programs.

³³ Agencies that provided information on the disposition of seized vehicles reported seizing 2,537 vehicles in Fiscal Year 2013-14. Approximately 13% of these vehicles had been forfeited by the time of our survey and another 4% were still pending disposition.

Fiscal Year 2013-14 for temporary undercover work and 23 agencies reported taking permanent ownership of 55 vehicles during that year.

Agencies reported combined balances of over \$79 million at the end of Fiscal Year 2013-14 in forfeiture funds acquired through both state and federal law. Agencies reported spending only a portion of the funds available in forfeiture trust funds. Despite spending over \$12 million in Fiscal Year 2013-14 from the forfeiture funds received under state law, agencies reported a total balance in local funds in excess of \$34 million at the end of the year. (See Exhibit 7.) In addition to these funds, agencies also reported balances of almost \$45 million in trust funds holding the proceeds of federal forfeitures, despite spending \$16 million from these funds during the same period.

Exhibit 7

Agencies Reported Over \$79 Million in State and Federal Forfeiture Accounts at the End of Fiscal Year 2013-14¹

Fiscal Year 2013-14	Amount of State Forfeiture Funds	Amount of Federal Forfeiture Funds
Balance as of September 30, 2013	\$29,872,348	\$43,813,757
Deposits	\$17,378,267	\$22,889,010
Expenditures	\$12,158,090	\$16,285,419
Balance as of September 30, 2014	\$34,304,107	\$44,749,883

¹ The fiscal year is October 1 through September 30.

Source: OPPAGA survey of local law enforcement agencies.

The combined assets of over \$79 million in the two types of forfeiture accounts represents a sizable resource for local law enforcement agencies. However, overall, the funds represent a small proportion of agency budgets, with forfeiture fund balances representing only 2.3% of the approximately \$3.3 billion operating budgets of the agencies that responded to our survey.

Options

The Legislature could consider several changes to the civil asset forfeiture law

Civil asset forfeiture practices in Florida and across the country have recently come under scrutiny as legislatures have tried to balance the rights of property owners with the efforts of law enforcement agencies to apprehend and prevent criminal activity. Without statewide information, the Legislature does not know the extent of civil asset forfeiture practices in Florida, nor can it be assured that the provisions of the Contraband Forfeiture Act are being followed. Law enforcement officials also made suggestions to increase the effectiveness of asset seizure as a tool in reducing criminal activity. However, opponents of civil asset forfeiture have asserted that reforms are needed.

Local law enforcement agencies should be required to report seizure actions and forfeitures to the state at least annually. While agencies are required to follow a number of protocols when seizing assets under Florida state law, there has not been a statewide reporting requirement since 2006. Such a requirement would make the type of information we collected for this report easier to obtain, more consistent, and more reliable. Such data could create a clearer picture of the extent to which Florida law enforcement agencies participate in civil asset forfeiture and provide additional transparency. Specifically, it could potentially identify disparities in the enforcement of the law and help the Legislature determine whether the law is being used to effectively reduce criminal enterprise within the state.

Currently, 33 states have a civil asset forfeiture reporting requirement, although several of those states do not store the information in an easily-accessible centralized location. Seven states report the information to the state attorney general. Other states report the information to the state police, the state auditor, the state treasurer, or other state-level entities. The reported information is available online in eleven states.

In Florida, the Legislature could require local law enforcement agencies to provide an annual web-based report, providing detail on seizure and forfeiture actions, including the nature of the assets seized, the estimated value of those assets, the underlying offense, and whether a related arrest was made. Agencies could also be required to provide information on forfeiture funds expenditures, including information on the substance abuse and crime prevention programs that receive funds.

Law enforcement agencies believe the Florida Contraband Forfeiture Act works well as a tool to fight crime, but some agencies made suggestions for improvements. Our interviews with and survey of law enforcement agencies found general support for civil asset forfeiture. As one survey respondent stated, the law is “clear, concise, and fair,” adding that it “serves as a valuable tool against people committing felonies.” We asked survey respondents to suggest changes to the law and received suggestions from 11 of the 152 respondents. These suggested changes included requiring better record keeping and adjustments to the time deadlines in the process.

Some officials described provisions of law or case law that have limited their ability to use forfeiture laws effectively in fighting crime. These provisions include the statutory prohibition against the forfeiture of rental cars that may have been used in criminal activity without the actual knowledge of the renting entity. Officials said that when drug dealers use rental cars, it reduces law enforcement’s ability to disrupt criminal activity through forfeiture. Officials also said that some recent court decisions have limited the ability of law enforcement to seize substitute assets when criminals have hidden or disposed of the actual assets gained through criminal activity.

Stakeholders have proposed several reforms to increase property owner protections and limit law enforcement use of forfeiture proceeds. Opponents of civil asset forfeiture have asserted that reforms are needed to better protect property owners and to limit law

enforcements’ use of forfeiture proceeds. In addition to increased reporting requirements, we identified three areas in which other states have reformed their civil asset forfeiture laws.

Require conviction before forfeiture. One of the most substantial reforms is to require that law enforcement convict the property owner in criminal court before any property can be forfeited. This type of reform essentially eliminates civil asset forfeiture as a process distinct from criminal forfeiture. Four states (Minnesota, Montana, Nevada, and New Mexico) have amended their contraband forfeiture law in the past year to require a conviction prior to forfeiture. North Carolina already had this requirement. Currently, Florida is like the majority of states, which does not require a criminal conviction before forfeiture.

Increase the standard of proof. While criminal cases require proof beyond a reasonable doubt, the standard of proof in most states for civil asset forfeiture cases is much lower. This is an important difference since assets can be seized and forfeited whether or not the property owner is convicted of a crime. Currently, some states, including Illinois and South Carolina, require only the lowest standard of proof, probable cause. Florida is 1 of 11 states which uses a clear and convincing evidence standard, which is higher than many other states. However, California uses the higher standard—beyond a reasonable doubt—in real property cases and Nebraska, North Carolina, and Wisconsin use a beyond a reasonable doubt standard in all cases. Michigan recently increased its evidentiary standard from a preponderance of the evidence to clear and convincing evidence, the same standard Florida law requires.

Although Florida’s standard of proof in forfeiture cases is higher than many states, the Legislature could consider further increasing the evidentiary standard in Florida to beyond a reasonable doubt, the standard required in criminal trials.

Restrict the use of civil asset forfeiture proceeds. Currently, law enforcement agencies in Florida that seize over \$15,000 during the fiscal year are permitted to keep 85% of the forfeited assets; agencies that do not seize over \$15,000 are allowed to keep 100% of the forfeited assets. However, many states restrict law enforcement to keeping a smaller percentage, and eight states (Indiana, Maine, Maryland, Missouri, New Mexico, North Carolina, North Dakota, and Vermont) do not allow law enforcement to keep any forfeiture proceeds. In these states, law enforcement is required to send the proceeds to a general fund or to a fund for a specific purpose such as education.

To further restrict the use of civil asset forfeiture funds by law enforcement in Florida, the Legislature could reduce the percentage of funds that agencies are allowed to keep, increase the percentages given to substance abuse and crime prevention programs, or designate funds for other purposes. For example, Arkansas requires that 20% of funds be deposited in the state treasury specifically for the crime lab equipment fund. Connecticut

directs 20% of funds to its Department of Mental Health and Addiction Services for substance abuse and tobacco prevention programs.

If the Legislature decides to allow law enforcement agencies to retain civil asset forfeiture proceeds, it may want to consider further restricting the other law enforcement purposes for which civil asset forfeiture proceeds can be used. Currently, the language is broad and allows for any law enforcement purpose that is not a normal operating expense.

Agency Response ---

In accordance with the provisions of s. 11.51(2), *Florida Statutes*, we submitted a draft of our report to the president of the Florida Sheriffs Association, the executive director of the Florida Police Chiefs Association, and the commissioner of the Florida Department of Law Enforcement for their review and response. Their responses have been reproduced in Appendices B, C, and D, respectively.

Appendix A

Federal Seizure and Forfeiture Laws Present Different Approaches to Seizing and Forfeiting Assets

In addition to the Florida Contraband Forfeiture Action, law enforcement agencies can participate in civil asset forfeiture actions through collaboration with the federal government. When assets are seized under federal law, the U.S. Department of Justice, the U.S. Department of Treasury, and affiliated federal law enforcement agencies process the forfeiture according to federal rules and share the proceeds with the law enforcement agencies that participated in the investigation associated with the forfeiture through the Equitable Sharing Program. Implemented through the Comprehensive Crime Control Act of 1984, equitable sharing allows state and local law enforcement agencies to transfer assets they seize to federal law enforcement agencies. Federal law enforcement officials can take possession of this property and initiate federal forfeiture actions as long as the conduct giving rise to the seizure is in violation of federal law and where federal law provides for forfeiture.

There have historically been two forms of equitable sharing activities—joint investigative forfeitures and adoptive forfeitures. Joint investigative forfeitures come from cooperative investigations between federal and state or local law enforcement. The percentage of funds shared in these cases depends on the extent of state or local law enforcement involvement in the investigation that led to the seizure. Joint investigative forfeitures are common with task forces that investigate drug trafficking, organized crime, and other multi-jurisdictional crimes. Adoptive forfeitures, on the other hand, happen when state or local law enforcement agencies seize property during the investigation of a state crime that is also a federal crime. State and local law enforcement transfer the seized property to a federal law enforcement agency, which adopted the property for federal forfeiture proceedings. In this type of seizure, state and local entities would receive 80% of the asset value returned to them, while the federal government retains 20% to cover cost of operating the federal funds.

In January 2015, the U.S. attorney general severely limited the practice of adoptive forfeitures. This was done, at least partially, in response to concerns that the practice was giving state law enforcement an incentive to turn seizures over to the federal government because the forfeiture process was perceived as less burdensome than the process under many state laws. In the federal program, certain forfeitures can be pursued through an administrative hearing rather than a trial, and the federal preponderance of the evidence standard of proof is lower than some state standards, including Florida's clear and convincing standard. In some cases, law enforcement agencies could even process forfeitures through the federal government if federal agents had not been involved in the investigation that led to the seizure. With the change to limit adoptive seizures, the federal government may now only take seized assets through its process if federal agents are involved with the investigation leading to the seizure.

There are differences between federal and state civil asset forfeiture. There are three primary differences between the federal program and the Florida Contraband Forfeiture Act.

- *Federal forfeitures can be processed as administrative rather than judicial forfeitures.* All forfeitures under state law in Florida which are not settled must be filed in circuit court. However, the federal agency can process seized assets in one of three ways. If the owner does not file a claim for the asset within 35 days of notice of seizure, the forfeiture can be handled

administratively.³⁴ If the owner files a claim for the asset, then the government can choose to proceed with a civil case against the asset, similar to Florida forfeiture process, or it can make the asset part of the criminal cases against the defendant so that the forfeiture is dependent upon the outcome of the criminal case. In an administrative forfeiture, the case is reviewed within the federal agency and then presented in an administrative hearing where the declaration of forfeiture can be issued. An administrative forfeiture is a less costly process than pursuing the forfeiture through civil or criminal court.

- *The federal requirements prohibit the use of forfeited assets for non-law enforcement purposes.* Like Florida, the federal government has set forth requirements for the use of forfeiture assets by local law enforcement agencies. Unlike Florida, agencies are required to use the funds for law enforcement purposes only, and there is not a provision in the federal program for donating a portion of the assets to substance abuse and crime prevention programs. Because of the federal requirements governing the use of federal forfeiture funds, agencies cannot co-mingle these funds with other funds, such as proceeds from forfeitures under state law. Therefore, it is necessary for local law enforcement agencies to keep separate funds for the state and federal forfeitures.
- *The federal program requires annual reporting.* Through its equitable sharing agreement and certification program, the federal government provides oversight on the use of forfeited assets. Each year, the local law enforcement agency and local government must provide certification to the federal government that they are complying with these requirements. Agencies that do not provide this certification are not eligible to receive funds. In addition, the federal government requires annual reporting from agencies on the expenditure of funds. These reports can lead to investigations of inappropriate expenditures and can result in a requirement that agencies return funds to the federal trust fund or even to the federal agency, if warranted.³⁵ While sheriffs and the police chiefs in Florida are required to make a request to local government for expenditure of forfeiture proceeds under the state program accompanied by a certification that the request complies with state law, there is no annual reporting requirement.

Florida law enforcement agencies have received more than \$153 million in forfeiture proceeds over the past five years through the federal Equitable Sharing Program. The U.S. Department of Justice provides an annual report on the amounts of civil asset forfeiture funds distributed to local law enforcement agencies. We reviewed this data for the past five federal fiscal years and found that the amounts of forfeited funds received by all Florida agencies, including state agencies, from the U.S. Department of Justice has varied substantially over the past five years, ranging from a low of \$17 million in the 2014 federal fiscal year to a high of over \$52 million in the 2012 federal fiscal year. (See Exhibit A-1.)

Forty-five law enforcement agencies in Dade and Broward counties received 46% of federal forfeiture funds returned to Florida from the U.S. Department of Justice over the last five federal fiscal years (2010-2014). The Broward Sheriff's Office received \$12.5 million over the last five federal fiscal years, the most of any sheriff's offices in Florida. Over that same five years, six police departments representing populations of less than 100,000 residents each (North Miami Beach, Village of Bal Harbour, Sunny Isles Beach, Sunrise, the Town of Medley, and Homestead) received the highest total equitable sharing funds for police departments, receiving a combined total of \$34.2 million, or 22% of the statewide five-year total.

³⁴ Real property, cash amounts of more than \$500,000, and complex assets, such as stocks, bonds, licenses, and businesses cannot be processed administratively.

³⁵ In 2012, as the result of an investigation, the U.S. Department of Justice suspended the Bal Harbour Police Department from participation in the Equitable Sharing Program and required return of \$4.2 million in funds. In 2014, the U.S. Department of Justice's Office of the Inspector General released audit [CR-40-15-003](#), which required the Sunrise Police Department to return more than \$374,000 in unallowable costs paid for civil litigation forfeiture services.

Exhibit A-1

Florida Law Enforcement Agencies Have Actively Participated in Civil Asset Forfeiture in Partnership With the U.S. Department of Justice¹

Agencies and Task Forces		Federal Fiscal Year					Total Unique Agencies and Funds Received
		2010	2011	2012	2013	2014	
Local agencies	Number of local agencies receiving funds	115	120	126	125	120	190
	Total funds received	\$17,304,492	\$31,257,530	\$42,876,491	\$19,576,544	\$15,735,599	\$126,750,656
Task forces	Number of task forces receiving funds	2	3	3	3	3	4
	Total funds received	\$4,962,793	\$5,162,404	\$4,064,447	\$2,337,739	\$253,299	\$16,780,682
State agencies (including state attorneys and college and university police departments)	Number of state agencies receiving funds	11	9	9	10	10	17
	Total funds received	\$1,959,380	\$1,010,323	\$5,123,734	\$751,283	\$1,057,014	\$9,901,734
Total all agencies		\$24,226,665	\$37,430,257	\$52,064,672	\$22,665,566	\$17,045,912	\$153,433,072

¹ State law enforcement agencies may also participate in civil asset forfeiture with other federal agencies, such as the U.S. Department of Treasury.

Source: OPPAGA analysis of U.S. Department of Justice data.



Appendix B



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FLORIDA SHERIFFS ASSOCIATION

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November 12, 2015

Mr. Phillip Twogood
Coordinator
Office of Program Policy Analysis and Governmental Accountability
111 West Madison Street
Claude Pepper Building, Room 312
Tallahassee, FL 32399-1475

Dear Mr. Twogood:

The Florida Sheriffs Association appreciates this opportunity to review and comment on your draft report, *Civil Asset Forfeiture in Florida: Policies and Practices*.

During the 2015 session, there was significant discussion about Florida's civil asset forfeiture law and whether the current law provided enough protections against improper seizures by law enforcement and utilization of the forfeited dollars by agencies. Florida Sheriffs believe the continued ability to seize and forfeit contraband under the Contraband Forfeiture Act (CFA) is an essential tool for fighting and preventing crime. The Florida Sheriffs Association's position then and now remains that Florida already has a comprehensive CFA that strikes the right balance of providing strong due process protections for claimants, while at the same time providing oversight for the expenditures of funds forfeited pursuant to the Act.

There is much that Florida is doing right. As reflected in the report, Florida is one of only six states that place the burden of proof in civil asset forfeiture cases with the government. Many states require the owner of the seized asset to prove that the asset was not being used in criminal activity. In cases of forfeiting property, Florida uses clear and convincing evidence, a higher level standard of proof than is required in many states in the county.

In addition, Florida has strict time frames that government must follow including that the formal notice of seizure must be provided to notify anyone who potentially has ownership of the property within 5 days of the seizure or it cannot proceed; there is an automatic adversarial preliminary hearing for all real property seizures where the burden to prove the property was used in violation of the law is on the seizing agency; a preliminary hearing is held in front of a circuit judge and he/she must find probable cause of criminal activity for the forfeiture to continue and if the judge determines that there is probable cause, the claimant can make an immediate appeal; a judge can order attorney's fees up to \$1,000 if they find no probable cause; Florida has an innocent owner defense, which means it is the government's burden to prove that the owner is guilty or should have known that the property was used for illegal purposes; and if the court determines that the seizing agency did not proceed in good faith at any time, reasonable attorney's fees and costs will be awarded.

Also, the CFA specifically requires oversight in the expenditures of the dollars requiring either the Board of County Commissioner or City Commission to approve any expenditure and forfeited proceeds can only be used for very specific things outlined by law. Lastly, the law specifically prohibits use of proceeds for normal operating expenses of the agency.

Florida's model is one that is working, however, like all policies, there is always room for improvement. Last session the FSA in conjunction with Senator Bean proposed enhancements to the CFA which are consistent with some of your findings. These enhancements included:

1. A required annual review of seizures of assets made by the agency's law enforcement officers, settlements, and forfeiture proceedings initiated by the agency, to determine whether such seizures, settlements, and forfeitures comply with the Florida Contraband 23 Forfeiture Act and prompt correction of any deficiencies.
2. A requirement that the employment, salary, promotion, or other compensation of any law enforcement officer may not depend on obtaining a quota of seizures.
3. A requirement that all agencies have written policies, procedures and training to ensure compliance with the Act.
4. A requirement that the probable cause supporting the seizure must be promptly reviewed by the supervisory personnel and the agency's legal advisor.
5. A requirement that agencies have written policies promoting the prompt release of property when there is no legitimate basis for holding the property and that all asserted claims of interest are promptly reviewed for potential validity.
6. A requirement that all settlements be consistent with the Act.
7. A requirement that all personnel involved in the seizure of property receive basic training and continuing education required by the Act and must maintain records of such training.
8. A requirement that each agency completes an annual report detailing the seizures and forfeitures for each year and must have that report on file for public access.

Other areas the FSA would support are:

- Increased judicial review
- Increased accountability in settlement agreements
- Increased mandatory contribution to non-profits

Thank you again for your providing a comprehensive overview of the CFA. The Florida Sheriffs Association looks forward to representing the voice of law enforcement on this important topic as it is further discussed by the Legislature.

Sincerely,



Sheriff Sadie Darnell
Alachua County Sheriff's Office
President, Florida Sheriffs Association
SD/tm

Appendix C



Florida Police Chiefs Association

Quality Law Enforcement for the Sunshine State

November 13, 2015

R. Philip Twogood, Ph.D.
Coordinator
Office of Program Policy Analysis & Government Accountability
111 West Madison Street, Room #312
Tallahassee, FL 32399-1475

Dear Dr. Twogood:

Thank you for the opportunity to review the preliminary findings of OPPAGA's report, ***Civil Asset Forfeiture in Florida: Policies and Practices*** and for giving us the opportunity to review the draft.

The Florida Police Chiefs Association believes civil asset forfeiture is a valuable tool for law enforcement agencies and should be used only to remove the ill-gotten gains from organized criminals who perpetrate serious crimes.

We appreciate the opportunity to work with OPPAGA since June 2015 as you began your research and developed your survey. We encouraged participation from our member law enforcement agencies to complete the OPPAGA survey. As you note, you received an overall response rate of 52% from both police departments and sheriff's offices, all of whom went to considerable effort to provide information that generally describes current local law enforcement practices related to civil asset forfeitures. However, this is still a sample. A reinstatement of annual reporting requirements would ensure the Legislature has current data to analyze when making policy decisions.

As you have learned, Florida has some of the strictest oversight standards in the country, and as you report, Florida's standard of proof in forfeiture cases is higher than many states. We do feel that there are opportunities to improve the process, and we look forward to working with the Florida Legislature on this very important issue.

Thank you for the opportunity to provide feedback on OPPAGA's draft report. Please feel free to contact me at 850-219-3631 to discuss.

Sincerely,

A handwritten signature in black ink that reads "Amy Mercer".

Amy Mercer
Executive Director

cc Chief Brett Railey, President of the FPCA
Chief Frank Fabrizio, Chair of the FPCA Legislative Committee
Tim Stanfield, Buchanan, Ingersoll and Rooney (BIR)
Claire Mazur, Staff Director, OPPAGA
Byron Brown, Chief Legislative Analyst, OPPAGA

Appendix D



Florida Department of
Law Enforcement

Richard L. Swearingen
Commissioner

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Pam Bondi, Attorney General
Jeff Atwater, Chief Financial Officer
Adam Putnam, Commissioner of Agriculture

November 13, 2015

Mr. R. Philip Twogood, Coordinator
Office of Program Policy Analysis and Government Accountability
111 West Madison Street, Room 312
Claude Pepper Building
Tallahassee, Florida 32399-1475

Dear Mr. Twogood:

The Department is in receipt of your letter dated November 6, 2015, and the preliminary findings of OPPAGA's report entitled "Civil Asset Forfeiture in Florida: Policies and Practices." I appreciate your courtesy in providing FDLE the opportunity to review the draft report and to provide input.

FDLE believes that the civil forfeiture of criminal assets continues to be an important law enforcement tool to combat crime and protect the public. Criminals should be denied the use or enjoyment of the illicit proceeds of their crimes. Similarly, they should not be permitted to keep property used to facilitate crime. Generally speaking, reforms to Florida's forfeiture laws should be approached cautiously to avoid unintended consequences that would benefit and encourage organized criminals.

In reviewing OPPAGA's draft report, we respectfully offer the following observations:

Page 1

Much of the seizure and forfeiture process occurs outside of court, with only 1% of forfeitures contested in a civil trial. (This statement is repeated on page 7.) FDLE response: While it is true that few forfeiture cases proceed to a full trial on the merits, all Florida forfeitures must be filed in civil court (unless the asset is held as evidence in a criminal case and it is either unclaimed or forfeited as part of a plea in the companion criminal case).

The Legislature may wish to consider revising state law to require law enforcement agencies to report information on the frequency and extent of civil asset forfeiture in Florida. FDLE response: FDLE would not oppose annually reporting its forfeiture activity to the Legislature. FDLE's own forfeiture policy already requires an internal annual review and assessment of its forfeitures.

Page 2

In Florida, as in other states, property can be forfeited either criminally or civilly. FDLE response: FDLE is unaware of "criminal" forfeiture, as such, under Florida law. However, FDLE acknowledges that forfeiture has been included as a term in plea agreements between State Attorneys and criminal defendants in the past.

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Mr. Philip Twogood
November 13, 2015
Page 2

...a seizure under the Florida Contraband Forfeiture Act does not require an arrest or conviction, and any related criminal proceedings or determinations are neither relevant nor admissible in a civil forfeiture action. FDLE response: This is not always the case. An adjudication of guilt in the related criminal case may be admitted in the civil forfeiture and create collateral estoppel issues. See: Star Tyme, Inc. v. Cohen, 659 So.2d 1064 (Fla. 1995).

Page 3

After a seizure occurs, the seizing law enforcement agency is required to identify and provide notice of seizure to the owner. FDLE response: Pursuant to Sections 932.701(2)(e) and 932.702(2)(a)-(b), Florida Statutes, notice is to be given to "persons entitled to notice." By definition, this means "any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry."

Page 7

However, survey respondents indicated that few seizure actions lead to adversarial hearings or trials. FDLE response: FDLE's experience has been that often, assets are seized pursuant to a seizure warrant wherein a judge has already made a probable cause determination. In those instances, the adversarial preliminary hearing has somewhat less significance.

These numbers suggest that a small number of owners challenge the actions brought against their property and that many owners decide to settle their cases, giving up their right to be heard by a judge and jury. FDLE response: This has been true in FDLE's experience, and is similar to the resolution in most criminal cases in which defendants elect to resolve the matter by entering a guilty or no contest plea in criminal court in lieu of a trial.

*Some property owners may be making these decisions without benefit of counsel since there is no right to representation for those who cannot afford it in civil asset forfeiture cases. FDLE response: FDLE's experience has been that in most of its forfeiture cases, the property owners are represented by counsel. Few of FDLE's forfeiture cases involved *pro se* (unrepresented) property owners.*

Page 12

*Require conviction before forfeiture...Currently, Florida is like the majority of states, which does not require a criminal conviction before forfeiture. FDLE response: FDLE would advise against the approach requiring a conviction before forfeiture. Forfeiture is an *in rem* proceeding against the contraband article, not the person. The seizing agency has to prove that the article is contraband and not that the claimant committed a crime. Moreover, not all meritorious criminal cases result in a conviction. For example, a sentencing judge may elect to withhold adjudication of guilt when sentencing a criminal defendant. Although such a defendant may not have been "convicted" of the offense, he or she is still culpable and subject to criminal sanctions. In other cases, the State Attorney may be forced to dismiss a criminal charge because a key witness has died or become unavailable, even though the defendant gave the police a full confession to the*

Mr. Philip Twogood
November 13, 2015
Page 3


crime. In these instances, as well as in numerous other examples, the seizing agency should not be barred from proceeding with a civil forfeiture.

Increase the standard of proof...Although Florida's standard of proof in forfeiture cases is higher than many states, the Legislature could consider further increasing the evidentiary standard in Florida to beyond a reasonable doubt, the standard required in criminal trials. FDLE response: Under current Florida law, seizing agencies are held to a clear and convincing standard of proof. This standard is higher than a probable cause standard and higher than the preponderance standard applicable in other types of civil litigation. Only the criminal case standard of beyond a reasonable doubt is higher than the clear and convincing standard. As pointed out above, forfeiture cases are civil in nature. A requirement of a criminal standard of proof in a civil case would create a hybrid and a legal anomaly. Such an approach could risk creating legal uncertainty as to the overall nature of civil forfeiture in Florida. In addition, if the objective in raising the standard of proof to beyond a reasonable doubt is to protect property owners from unjust forfeitures, it is important to recall that the standard of proof only becomes an issue if the case proceeds to a trial. As the survey indicated, only a small number of owners challenge the actions brought against their property and many owners elect to settle their cases, giving up their right to be heard by a judge and jury (the draft report indicates that only 1% of forfeitures are contested in a civil trial). Accordingly, this suggests that only a small number of owners would arguably stand to benefit from a higher burden of proof.

Page 13

Restrict the use of civil asset forfeiture proceeds...the Legislature could reduce the percentage of funds that agencies are allowed to keep, increase the percentages given to substance abuse and crime prevention programs, or designate funds for other purposes...If the Legislature decides to allow law enforcement agencies to retain civil asset forfeiture proceeds, it may want to consider further restricting the other law enforcement purposes for which civil asset forfeiture proceeds can be used. FDLE response: Changes to laws governing the use of civil asset forfeiture proceeds or the disposition of forfeited property should be made cautiously in light of diminishing resources, to include federal funding, for public safety. Many law enforcement agencies must already strive to do more with less funding. We agree that setting thresholds or designating percentages that should be contributed to non-profits may bring some balance, but we remain concerned that any restrictions placed on the use of these proceeds for investigative purposes could be counterproductive to public safety.

FDLE stands ready, together with our law enforcement partners, to assist in addressing concerns regarding civil forfeiture. We believe that this can be accomplished without weakening one of the most valuable tools law enforcement has in combating serious crime.

Sincerely,

Richard L. Swearingen
Commissioner

The Florida Legislature

Office of Program Policy Analysis and Government Accountability



OPPAGA provides performance and accountability information about Florida government in several ways.

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OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

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