

# PREVENTING ASSET FORFEITURE ABUSE IN NORTH CAROLINA

*PART 2:  
Anti-circumvention  
legislation in other states*



SPOTLIGHT

#503

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# PREVENTING ASSET FORFEITURE ABUSE IN NORTH CAROLINA

## Part 2: Anti-circumvention legislation in other states

This is the second part of a three-part analysis of the federal government’s “equitable sharing” program and its impact in North Carolina. Part One explained how equitable sharing makes it possible for North Carolina law enforcement agencies to circumvent the due process and property rights protections that are provided under North Carolina’s asset forfeiture laws.<sup>1</sup> Part Two describes and evaluates what other states have done to address this problem by means of anti-circumvention legislation. Part Three will offer specific recommendations for North Carolina.

### The problem

Depriving criminals of their ill-gotten gains is clearly desirable. The challenge is to do it in a way that protects the rights of innocent property owners and discourages abuse by law enforcement agencies. As explained in Part One, North Carolina has successfully met that challenge in two ways. First, under North Carolina’s criminal asset forfeiture statutes, property acquired through criminal activity may only be taken by the state after the owner has been convicted of the underlying crime.<sup>2</sup> Second, under the North Carolina Constitution, law enforcement agencies may neither retain forfeited property for their own use nor profit from its sale; instead, all forfeiture proceeds must be used for maintaining the public schools.<sup>3</sup> These provisions of North Carolina’s law have elicited high praise from public policy experts and have made our asset forfeiture regime a model for other states.<sup>4</sup>

The federal government’s approach to asset forfeiture is very different from North Carolina’s. Under federal civil asset forfeiture law, there’s no need to convict, or even charge, the owner of the property. Instead, a lawsuit is filed against *the property itself*. In addition, under federal civil asset forfeiture law, law enforcement agencies are not just allowed to keep and use forfeiture proceeds, *they’re required to do so*.<sup>5</sup> Compared to North Carolina’s *criminal* asset forfeiture regime, the federal government’s *civil* asset forfeiture regime makes a mockery of due process and perverts the proper relationship between the police and the public by turning the former into predators and the latter into their prey.

It would be bad enough if federal civil asset forfeiture laws were limited to federal law enforcement agencies,

“...federal equitable sharing makes it possible for North Carolina law enforcement agencies to circumvent the protective features of North Carolina law.”

but, unfortunately, they are not. Instead, the federal equitable sharing program makes it possible for state and local agencies to seize assets, refer them to federal agencies for processing under federal forfeiture law, and receive a substantial portion of the proceeds in return. Because the transaction takes place under federal law, state law does not apply, and that is the source of the problem. Simply put, federal equitable sharing makes it possible for North Carolina law enforcement agencies to circumvent the protective features of North Carolina law.

More than 100 North Carolina agencies, including the North Carolina State Bureau of Investigation and the Highway Patrol, regularly process seized assets through the equitable sharing program.<sup>6</sup> Between 2007 and 2017, those agencies collected more than \$187 million in proceeds.<sup>7</sup>

Were all of those seized assets taken from genuine criminals? We will never know. Because the assets were processed under federal rather than state law, there was no need to prosecute the owners and prove their guilt. Were the assets really used for or acquired through criminal activity? We will never know about that either, and for the same reason. Were all of the proceeds put to good use? Again, we will never know. Because the assets were processed under federal law, there was no need to use the proceeds for public education; instead, the agencies kept the proceeds and used them as they saw fit.

## Two forms of equitable sharing

State and local agencies can use equitable sharing to circumvent state asset forfeiture laws in either of two ways: by referring seized assets to a federal agency for “adoption” or by participating with a federal agency in a “joint investigation.” Because many states’ anti-circumvention laws deal with these two forms of equitable sharing separately, it is important to understand how each of them works.

The Department of Justice’s *Guide to Equitable Sharing for State and Local Law Enforcement Agencies* provides the following descriptions:

### *Adoption of a state or local seizure*

*An adoption occurs when a state or local law enforcement agency seizes property and requests one of the federal seizing agencies to adopt the seizure and proceed with federal forfeiture. Federal agencies may adopt such seized property for forfeiture where the conduct giving rise to the seizure is in violation of federal law and where federal law provides for forfeiture.<sup>8</sup> ...*

*The federal share in adoptive cases where a state or local agency performed 100 percent of pre-seizure activity will generally be 20 percent of the net proceeds.<sup>9</sup>*

### *Joint investigation*

*Joint investigations are those in which federal agencies work with state or local law enforcement agencies or foreign countries to enforce federal criminal laws. Joint*

## Proceeds Received By N.C. Law Enforcement From U.S. Department Of Justice

2007	\$19,812,152
2008	\$14,386,700
2009	\$15,826,136
2010	\$10,275,267
2011	\$9,996,968
2012	\$15,278,506
2013	\$12,821,362
2014	\$10,805,901
2015	\$11,883,462
2016	\$8,709,152
2017	\$9,256,927
<b>Total</b>	<b>\$139,052,533</b>

Source: The United States Department of Justice

## Proceeds Received By N.C. Law Enforcement From U.S. Department Of Treasury

2007	\$2,734,000
2008	\$6,888,000
2009	\$7,081,000
2010	\$3,276,000
2011	\$2,761,000
2012	\$4,108,000
2013	\$5,002,000
2014	\$5,736,000
2015	\$3,651,000
2016	\$5,480,000
2017	\$1,915,000
<b>Total</b>	<b>\$48,632,000</b>

Source: The United States Department of Treasury





cutting off the flow of shared revenue and without losing the benefits of joint investigations. From their experience, we can draw three broad lessons about what works and what doesn't.

### **Lesson One: Ban or severely restrict federal adoptions**

The District of Columbia was the first jurisdiction in the country to enact anti-circumvention legislation. In addition to reforming the District's own asset forfeiture regime, the Civil Asset Forfeiture Amendment Act of 2014 included two anti-circumvention provisions, one of which was an outright ban on federal adoptions:

*Beginning October 1, 2018, the District shall not refer seized property to a federal agency seeking the adoption by the federal agency of the seized property.<sup>16</sup>*

Many other jurisdictions subsequently adopted similar measures. In 2016, California passed an asset forfeiture bill that included a provision that effectively banned adoptions within the state.<sup>17</sup> In 2017, Pennsylvania followed suit with a similar measure,<sup>18</sup> and, that same year, the Institute for Justice (IJ) incorporated a modified adoption ban into its Anti-Circumvention Model Act.<sup>19</sup> In 2018, bills that included modified adoption bans based in IJ's Model Act were introduced in Alabama and in Minnesota,<sup>20</sup> and a number of similar proposals will almost certainly be introduced in 2019.

In short, banning or severely restricting federal adoptions has become a generally recognized "best practice" when it comes to asset forfeiture reform, and it is easy to see why. As previously noted, federal adoptions serve one purpose only: to make it possible for state law enforcement agencies to circumvent state asset forfeiture laws.

No state that goes to the trouble of reforming its own asset forfeiture laws wants those laws to be easily circumvented. Indeed, no state wants its own laws to be circumvented at all without some compelling justification, and, in the case of federal adoptions, no such justification is possible.

### **Lesson Two: Do not divert forfeiture proceeds away from law enforcement**

The ban of federal adoptions was not the only anti-circumvention provision included in the District of Columbia's 2014 Civil Asset Forfeiture Amendment Act. While the Act did not restrict the District's law enforcement agencies' ability to participate in joint investigations with federal agencies, it did restrict the use of shared proceeds derived from such investigations:

*Beginning October 1, 2018, [the District shall] deposit in the General Fund of the District government the currency and proceeds received by any agency of the District government from any state or federal agency pursuant to a multiple-jurisdiction or shared forfeiture program.<sup>21</sup>*

In theory, diverting forfeiture proceeds from law enforcement to the general fund would appear to be a very sensible restriction to impose. Like the provision in North Carolina's constitution requiring that forfeiture proceeds must be used for public education, diverting proceeds to the general fund removes the profit motive from the forfeiture process and ensures that it is used—not to generate revenue—but for its proper purpose, which is to punish criminals and discourage crime.

In practice, however, there is a problem with the diversionary approach. The problem was not immediately apparent because the District of Columbia's reform act did not become effective at the time of passage, but it was recognized the following year when New Mexico enacted asset forfeiture legislation that included a similar provision:

*Proceeds from the sale of forfeited property received by the state from another jurisdiction shall be deposited in the general fund.<sup>22</sup>*

New Mexico's law took immediate effect, and, when it did, the federal government's reaction was swift and brutal. Citing its own rule requiring that equitable sharing funds must be used "by law enforcement agencies for law enforcement purposes only,"<sup>23</sup> the Department of Justice (DOJ) announced that it would no longer participate in any joint investigations with New Mexico law enforcement agencies. This was an extreme response. The agency

**“Rather than banning equitable sharing entirely, therefore, reformers have experimented with various ways of mitigating its worst aspects without entirely cutting off the flow of shared revenue and without losing the benefits of joint investigations.”**

could have continued to participate in joint operations and simply stopped sharing the proceeds of assets seized in the course of those operations, but it evidently wanted to send a message, and that message was received. None of the anti-circumvention laws that have passed since 2015 have included a provision that diverts forfeiture proceeds away from law enforcement, nor is there any such provision in IJ’s Model Act.

***Lesson Three: Only allow equitable sharing when the value of seized assets exceeds a minimum monetary threshold***

With the diversionary approach effectively off the table, reformers were forced to look for an alternative way of taking the profit motive out of the forfeiture process. In the end, they settled for an approach that takes the profit motive out of *most* forfeiture cases by limiting equitable sharing to cases in which the value of seized assets exceeds a minimum monetary threshold.

As “second best” solutions go, this one is not too bad. Because most forfeiture cases involve small seizure amounts, the imposition of a threshold ensures that most forfeiture decisions will be made on public safety grounds alone. At the same time, because most forfeiture revenue comes from cases involving large seizure amounts, the imposition of a threshold accomplishes this goal with a minimal loss of shared revenue.<sup>24</sup>

There are actually two versions of the threshold approach. Under the first, a minimum monetary threshold must be met before a state agency can *transfer* seized assets to a federal agency for processing. Under the second, a minimum monetary threshold must be met before a state agency can *receive* a share of seizure proceeds *from* a federal agency. Each version has its pros and its cons.

**Transfer Threshold**

The first state to experiment with the threshold approach was New Mexico. In addition to the ill-fated provision that diverted forfeiture proceeds into the state’s general fund, New Mexico’s forfeiture reform bill also included the following provision:

*A law enforcement agency shall not directly or indirectly transfer seized property to a federal law enforcement authority or other federal agency unless ... the value of the seized property exceeds fifty thousand dollars (\$50,000).*<sup>25</sup>

Other states soon followed New Mexico’s example. In 2016, Nebraska and Maryland both enacted forfeiture reform statutes with minimum monetary thresholds that must be met before state agencies can transfer seized assets to federal agencies (\$25,000 and \$50,000, respectively).<sup>26</sup>

The following year, Ohio and Arizona enacted reforms with even higher thresholds on such transfers (\$100,000 and \$75,000).<sup>27</sup>

While the primary purpose of imposing a threshold on transfers from state agencies to federal agencies is to eliminate the profit motive for *state* agencies in small-asset cases, this version of the threshold approach also eliminates the profit motive for *federal* agencies in such cases as well. From the reformer's point of view, this is a point in its favor; however, it has a potential downside as well. Eliminating the profit motive for federal agencies in small-asset cases could have the effect of making federal agencies reluctant to work with state agencies on such cases, even when working together would be merited on other grounds.<sup>28</sup>

Concern about this possibility has made some state law enforcement agencies and some state lawmakers reluctant to support any reform proposal that imposes a threshold on transfers, and, to alleviate those concerns, some states have experimented with a second version of the threshold approach.

## Receipt Threshold

With the second version, there is no minimum threshold that must be met before a state agency can *transfer* seized assets *to* the federal government. Instead, a minimum threshold must be met before a state agency can *receive* a share of the proceeds *from* the federal government after processing. Because it lets federal law enforcement agencies keep *all* the proceeds in joint operations involving low-value assets, the second version of the threshold approach actually encourages federal agencies' participation in such operations by making those operations extra profitable for them. Making forfeiture profitable is not something reformers would normally want to do. Nevertheless, some of them have decided that is a price worth paying in order to secure the support of state law enforcement agencies and state lawmakers for reforms that are otherwise highly desirable.

The first state to experiment with a minimum threshold on receipts from the federal government was California, which included a \$40,000 receipt threshold as part of asset forfeiture reform legislation enacted in 2016.<sup>29</sup> California's receipt threshold is part of a complicated provision that, among other things, waives the threshold requirement when there is a criminal conviction. However, the jurisdictions that have followed California's example have taken a more direct approach that does not involve any exceptions.

In 2017, for example, Colorado adopted legislation that includes the following provision:

*[A] seizing agency or participant in any joint task force or other multijurisdictional collaboration shall accept payment or distribution from a federal agency of all or a portion of any forfeiture proceeds ... only if the aggregate net equity value of the property and currency seized in a case is in excess of fifty thousand dollars.*<sup>30</sup>

Later that same year, the Institute for Justice incorporated a similarly straightforward \$100,000 minimum threshold for receipts in its Model Anti-Circumvention Act,<sup>31</sup> and a \$100,000 receipt threshold was also included in asset forfeiture reform bills introduced in Alabama and Minnesota in 2018.<sup>32</sup>

Like a ban on adoptions, only allowing equitable sharing when the value of the seized assets exceeds a minimum monetary threshold appears to be the current "best practice" when it comes to anti-circumvention legislation. However, whether the threshold should be applied to transfers to federal agencies or to receipts from federal agencies is more of a judgment call. The former does a better job of protecting the public and discouraging abuse, but the latter may be easier to sell to state law enforcement agencies and state lawmakers.



## Conclusion

Between 2014 and 2017, eight states and the District of Columbia enacted legislation restricting the use of equitable sharing to circumvent state asset forfeiture laws. In 2017, the best elements from these laws were incorporated into a Model Anti-circumvention Act by the Institute for Justice. Legislation based on IJ's model act was introduced in two more jurisdictions in 2018, and additional proposals based on that act are expected to be introduced in 2019.

From this collective experience, we can draw three lessons about best practices when it comes to anti-circumvention legislation:

1. Ban or severely restrict federal adoptions.
2. Do not divert equitable sharing proceeds away from law enforcement.
3. Only allow equitable sharing when the value of seized assets exceeds a minimum monetary threshold.

The third and final installment in this series will examine how these lessons can be applied in North Carolina.

***“Depriving criminals of their ill-gotten gains is clearly desirable. The challenge is to do it in a way that protects the rights of innocent property owners and discourages abuse by law enforcement agencies.”***

# APPENDIX A

## Selected Provisions from State Asset Forfeiture Reform Bills

### Alabama

S.B. 213, (AL 2018):

*Section 25. Adoption, Joint Task Forces and Receipt of Payment of Forfeiture Proceeds from the Federal Government.*

*(a) A law enforcement agency shall not refer, transfer, or otherwise relinquish possession of property seized under state law to a federal agency by way of adoption of the seized property or other means by the federal agency for the purpose of the property's forfeiture under the federal Controlled Substances Act.*

*(b) A law enforcement agency or participant in a joint task force with the federal government or other multijurisdictional collaboration with the federal government shall not accept payment of any kind or distribution of forfeiture proceeds or property resulting from a joint task force with the federal government or other multijurisdictional collaboration with the federal government unless the aggregate net equity value of the property or currency forfeited in a case exceeds one hundred thousand dollars (\$100,000), excluding the value of contraband.*

### Arizona

H.B. 2477, (Ariz. 2017):

*Sec. 5.*

....

*I. The seizing agency or the attorney for the state may not enter into any agreement to transfer or refer seized property to a federal agency for the purpose of forfeiture if the property was seized pursuant to an investigation that either:*

- 1. Did not involve a federal agency.*
- 2. Involves a violation of a state law and no violation of a federal law is alleged.*

*J. Property that is seized in a joint investigation may not be transferred or referred to a federal agency for the purpose of forfeiture unless the gross estimated value of the seized property is more than seventy five thousand dollars.*

*K. This section does not prohibit:*

- 1. The federal government or any of its agencies from seizing property, seeking forfeiture pursuant to federal law and sharing property that is forfeited pursuant to federal law with a state or local law enforcement agency that participates in a joint investigation.*
- 2. A state or local law enforcement agency from participating in a joint investigation.*

*L. For the purposes of this section, "joint investigation" means an investigation in which a state or local law enforcement agency directly participates in the investigation or enforcement of a federal criminal law with a federal agency and the investigation or enforcement results in a seizure.*

### California

S. B. 443, Sess. 2015-2016 (CA 2016):

*CHAPTER 831*

*Sec. 2. Section 11471.2 is added to the Health and Safety Code, to read:*

11471.2. (a) State or local law enforcement authorities shall not refer or otherwise transfer property seized under state law authorizing the seizure of property to a federal agency seeking the adoption of the seized property by the federal agency for proceeding with federal forfeiture under the federal controlled substances act. Nothing in this section shall be construed to prohibit the federal government, or any of its agencies, from seizing property, seeking forfeiture under federal law, or sharing federally forfeited property with state or local law enforcement agencies when those state or local agencies work with federal agencies in joint investigations arising out of federal law or federal joint task forces comprised of federal and state or local agencies. Nothing in this section shall be construed to prohibit state or local law enforcement agencies from participating in a joint law enforcement operation with federal agencies.

(b) Except as provided in this subdivision and in subdivision (c), a state or local law enforcement agency participating in a joint investigation with a federal agency shall not receive an equitable share from the federal agency of all or a portion of the forfeited property or proceeds from the sale of property forfeited pursuant to the federal controlled substances act unless a defendant is convicted in an underlying or related criminal action of an offense for which property is subject to forfeiture as specified in section 11470 or section 11488, or an offense under the federal controlled substances act that includes all of the elements of an offense for which property is subject to forfeiture as specified in Sections 11470 and 11488. In any case in which the forfeited property is cash or negotiable instruments of a value of not less than forty thousand dollars (\$40,000) there shall be no requirement of a criminal conviction as a prerequisite to receipt by state or local law enforcement agencies of an equitable share from federal authorities.

(c) If the defendant has been arrested and charged in an underlying or related criminal action or proceeding for an offense described in subdivision (b) and willfully fails to appear as required, intentionally flees to evade prosecution, or is deceased, there shall be no requirement of a criminal conviction as a prerequisite to receipt by state or local law enforcement agencies of an equitable share from federal authorities.

## Colorado

H.B. 1313, Reg. Sess. 2017, (Colo. 2017):

*SECTION 2. In Colorado Revised Statutes, add 16-13-306.5 as follows:*

*16-13-306.5. Limitations on receipt of forfeiture payments from federal agencies. (1) a seizing agency or participant in any joint task force or other multijurisdictional collaboration shall accept payment or distribution from a federal agency of all or a portion of any forfeiture proceeds resulting from adoption or a joint task force or other multijurisdictional collaboration only if the aggregate net equity value of the property and currency seized in a case is in excess of fifty thousand dollars and a forfeiture proceeding is commenced by the federal government and relates to a filed criminal case.*

*(2) subsection (1) of this section shall not be construed to restrict seizing agencies from collaborating with a federal agency to seize property that the seizing agency has probable cause to believe is the proceeds or instruments of a crime through an intergovernmental joint task force.*

*SECTION 3. In Colorado Revised Statutes, add 16-13-504.5 as follows:*

*16-13-504.5. Limitations on receipt of forfeiture payments from federal agencies.*

*(1) a seizing agency or participant in any joint task force or other multijurisdictional collaboration shall accept payment or distribution from a federal agency of all or a portion of any forfeiture proceeds resulting from adoption or a joint task force or other multijurisdictional collaboration only if the aggregate net equity value of the property and currency seized in a case is in excess of fifty thousand dollars and a forfeiture proceeding is commenced by the federal government and relates to a filed criminal case.*

*(2) subsection (1) of this section shall not be construed to restrict seizing agencies from collaborating with a federal agency to seize property that the seizing agency has probable cause to believe is the proceeds or instruments of a crime through an intergovernmental joint task force.*

## District of Columbia

Bill 20-48, Civil Asset Forfeiture Amendment Act of 2014, (D.C. 2014):

*Sec. 110. Disposal of forfeited property.*

*(a) When any property is declared forfeited ... the District shall ... [b]eginning October 1, 2018, deposit in the General Fund of the District government the currency and proceeds received by any agency of the District government from any state or federal agency pursuant to a multiple-jurisdiction or shared forfeiture program.*

*(b) The law enforcement agency that seized property forfeited under this title may not retain the property for its own use or sell it directly or indirectly to any employee of the agency, to a relative of an employee, or to another law enforcement agency; however, nothing in this section shall prohibit an employee of the law enforcement agency or relative of an employee of the law enforcement agency from purchasing property offered for sale at a public auction.*

*Sec. 111. Prohibition on adoptive seizures.*

*Beginning October 1, 2018, the District shall not refer seized property to a federal agency seeking the adoption by the federal agency of the seized property. Nothing in this title shall be construed to prohibit the federal government, or any of its agencies, from seeking federal forfeiture.*

## Maryland

H.B. 336, (Maryland, 2016):

*SECTION 1 ...*

*12-212.*

*A seizing authority or prosecuting authority may not directly or indirectly transfer seized property to a federal law enforcement authority or agency unless:*

*(1) a criminal case related to the seizure is prosecuted in the federal court system under federal law; [or]*

*(2) the owner of the property consents to the forfeiture;*

*(3) the property is cash of at least \$50,000; or*

*(4) the seizing authority transfers the property to a federal authority under a federal seizure warrant issued to take custody of assets originally seized under state law.*

## Minnesota

H.F. 3725, Sess. 2017–2018 (MN 2018):

*Article 1*

*Forfeiture Procedures*

*...*

*Sec. 8. Minnesota Statutes 2016, section 609.531, is amended by adding a subdivision to read:*

*Subd. 9. Adoption; joint task forces; receipt of payment proceeds from federal government. (a) An appropriate agency shall not refer, transfer, or otherwise relinquish possession of property seized under state law to a federal agency by way of adoption of the seized property or other means by the federal agency for the purpose of the property's forfeiture under federal law.*

*(b) An appropriate agency or participant in a joint task force or other multijurisdictional collaboration with the federal government shall not accept payment of any kind or distribution of forfeiture proceeds resulting from a joint task force or other multijurisdictional or property a law enforcement agent has probable cause to believe is the proceeds or instruments of a crime that subjects the property to forfeiture.*

## Nebraska

L.B. 1106, (Neb. 2016):

*Sec. 13. No law enforcement agency or prosecuting authority of this state or its political subdivisions shall transfer or refer any money or property to a federal law enforcement authority or other federal agency by any means unless:*

- (1) the money or property seized exceeds twenty-five thousand dollars in currency or value;*
- (2) the money or property is physically seized by a federal agent who is employed by the federal government; or*
- (3) the person from whom the money or property was seized is the subject of a federal prosecution or the facts and circumstances surrounding the money or property seized are the subject of a federal prosecution.*

## New Mexico

H.B. 560, Reg. Sess. 2015 (N.M. 2015):

*SECTION 8. Section 31-27-7 NMSA 1978 (being Laws 2002, Chapter 4, Section 7) is amended to read:*

...

*C. Proceeds from the sale of forfeited property received by the state from another jurisdiction shall be deposited in the general fund.*

*SECTION 13. A new section of the Forfeiture Act is enacted to read:*

*“Transfer of forfeitable property to the federal government.” –*

*A. A law enforcement agency shall not directly or indirectly transfer seized property to a federal law enforcement authority or other federal agency unless:*

- (1) the value of the seized property exceeds fifty thousand dollars (\$50,000), excluding the potential value of contraband; and*
- (2) the law enforcement agency determines that the criminal conduct that gave rise to the seizure is interstate in nature and sufficiently complex to justify the transfer of property; or*
- (3) the seized property may only be forfeited under federal law.*

*B. The law enforcement agency shall not transfer property to the federal government if the transfer would circumvent the protections of the Forfeiture Act that would otherwise be available to a putative interest holder in the property.”*

## Ohio

H.B. 347, (Ohio 2017):

*Section 1. That section ... 2981.14 be amended ... to read as follows:*

...

*(A) Subject to division (B) of this section, nothing in this chapter precludes the head of a law enforcement agency that seizes property from seeking forfeiture under federal law. If the property is forfeitable under this chapter and federal forfeiture is not sought, the property is subject only to this chapter.*

*(B) A law enforcement agency or prosecuting authority shall not directly or indirectly transfer or refer any property seized by the agency or authority to any federal law enforcement authority or other federal agency for purposes of forfeiture under federal law unless the value of the seized property exceeds one hundred thousand dollars, excluding the potential value of the sale of contraband, or the property is being transferred or referred for federal criminal forfeiture proceedings.*

## **Pennsylvania**

*S.B. 8, Sess. Of 2017-2018 (Penn. 2017):*

*Section 9. Title 42 is amended by adding a chapter to read:*

### *CHAPTER 58*

#### *FORFEITURE OF ASSETS*

...

§ 5807. 1 Prohibition on adoptive seizures.

*State law enforcement authorities shall not refer seized property to a federal agency seeking the adoption by the federal agency of the seized property. Nothing under this chapter shall prohibit the federal government or any of its agencies from seeking federal forfeiture of the same property under any federal forfeiture law.*

# APPENDIX B

The Institute for Justice  
Anti-Circumvention Model Act  
August 1, 2017

## Model State Legislation:

**A. Prohibition on federal adoption.** A local, county or state law enforcement agency shall not refer, transfer or otherwise relinquish possession of property seized under state law to a federal agency by way of adoption of the seized property or other means by the federal agency for the purpose of the property's forfeiture under the federal Controlled Substances Act.

**B. Minimum seizure for payment from federal forfeiture litigation.** A local, county or state law enforcement agency or participant in a joint task force or other multijurisdictional collaboration with the federal government shall not accept payment of any kind or distribution of forfeiture proceeds resulting from a joint task force or other multijurisdictional collaboration unless the aggregate net equity value of the property and currency seized in a case exceeds \$100,000, excluding the value of contraband.

**C. No Change to seizure laws.** Nothing in paragraphs A or B shall be construed to restrict a local, county or state law enforcement agency from acting alone or collaborating with a federal agency or other agency to seize contraband or property a law enforcement agent has probable cause to believe is the proceeds or instruments of a crime that subjects property to forfeiture.

**D. No control over federal government.** Nothing in paragraphs A or B shall be construed to prohibit the federal government, acting without the involvement of a local, county or state law enforcement agency, from seizing property and seeking forfeiture under federal law.

# ENDNOTES

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3. N.C. Const. art. IX, sec. 7.
4. Dick Carpenter II et al., “Policing for Profit” (Institute for Justice, Arlington, VA, 2015), <http://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf>.
5. Michael Greibrok, “Civil Asset Forfeiture: Grading the States,” Freedom Works, May 8, 2015, <http://www.freedomworks.org/content/civil-asset-forfeiture-grading-states>.
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19. Lee McGrath, “Anti-Circumvention Model Act” (Institute for Justice, Arlington, VA, 2017), <https://ij.org/wp-content/uploads/2017/03/08-01-2017-State-Anticircumvention-Act.pdf>.
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21. Bill 20-48, Civil Asset Forfeiture Amendment Act of 2014, (D.C. 2014), <http://lims.dccouncil.us/Download/29204/B20-0048-Engrossment.pdf>.
22. H.B. 560, Reg. Sess. 2015 (N.M. 2015), <https://nmlegis.gov/Sessions/15%20Regular/final/HB0560.pdf>.
23. Department of Justice, Criminal Division, Guide to Equitable Sharing, p. 17. (See, also, Department of the Treasury, Department of Treasury Equitable Sharing Program: Revised Interim Policy Guidance, Washington D.C., 2018, p. 3, <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/Revised-Interim-Policy-Guidance-on-the-Use-of-Shared-Funds-4-3-18.pdf>).
24. Only about 5 percent of joint investigations result in seizures of more than \$100,000, yet the assets seized in such high-value investigations account for more than 80 percent of all forfeiture proceeds. (Personal communication with Nick Sibilla, Legislative Analyst, Institute for Justice.)
25. H.B. 560, Reg. Sess. 2015 (NM 2015).
26. L.B. 1106, (Neb. 2016), <https://nebraskalegislature.gov/FloorDocs/104/PDF/Final/LB1106.pdf>; H.B. 336, (Maryland, 2016), <http://mgaleg.maryland.gov/2016RS/bills/hb/hb0336e.pdf>.
27. H.B. 347, (Ohio 2017), <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA131-HB-347>; H.B. 2477, (Ariz. 2017), <https://www.azleg.gov/legtext/53leg/1R/bills/HB2477S.htm>.
28. This is not mere speculation. In 2016, John Farley, Acting Director for the U.S. Department of the Treasury’s Executive Office for Asset Forfeiture, stated that, “[T]he greatest damage to criminal enterprises can be achieved through large forfeitures; hence we have set a target level of 80 percent of our forfeitures to be high-impact, i.e., cash forfeitures equal to or greater than \$100,000.” (Treasury Forfeiture Fund Accountability Report, Fiscal Year 2016, Department of the Treasury, Washington D.C. [https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/oig16033%20\(for%20web\).pdf](https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/oig16033%20(for%20web).pdf))
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31. Lee McGrath, “Model,” 2017.
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