



CPR Principles: Civil Asset Forfeiture

Civil asset forfeiture is a process through which law enforcement can seize property suspected of being connected to criminal activity. This is a property rights and due process issue because it involves the serious matter of permanently depriving a person of his or her private property.

The following principles outline the property rights principles CPR will apply in assessing the merits of policy matters pertaining to asset forfeiture.

- Asset forfeiture policies, both civil and criminal, should accord with the fundamental principles underlying the Fifth Amendment to the U.S. Constitution. These include the rule of law, due process, and private property rights. This amendment declares that no person may "... be deprived of life, liberty, or property, without due process of law...." Due process in asset forfeiture safeguards individuals from the government taking their private property unjustifiably and without affording them substantial procedural and evidentiary protections.
- Reasonable property rights protections are very important when property is allegedly tied to criminal activity but not directly connected to a criminal charge. Criminal asset forfeiture has traditionally carried greater procedural and evidentiary safeguards, such as a jury's finding property forfeitable. Civil asset forfeiture should provide comparable protections of property rights. Civil forfeiture proceedings where property is allegedly connected with criminal acts should require a showing of the property owner's criminal intent.
- Civil asset forfeiture laws should be structured to avoid incentivizing the government to pursue mere financial gain from the seizure of private property. Asset forfeiture should not amount to a revenue stream for particular government offices or agencies. Thus, most of the forfeited assets should go into a general fund, with expenditures tracked and reported.
- Asset forfeiture laws should not enable the abuse of government power. In criminal search and seizure, the Fourth Amendment is intended to secure individuals and their personal property, requiring great procedural, structural, and substantive protections against injustices under color of law. In the same manner, asset forfeiture must ensure citizens the benefit of the doubt under the law and place upon the government sufficient restraints and requirements that ensure fairness, justice, and protection of private property rights. Such safeguards include such measures as presumption in favor of the owner, substantial burden of proof on the government, and recovery of legal fees if the property owner prevails.