

# INEQUITABLE JUSTICE:

How Federal

**"Equitable Sharing"**



Encourages Local Police and Prosecutors  
To Evade State Civil Forfeiture Law  
For Financial Gain

By Dick M. Carpenter II, Ph.D., Larry Salzman and Lisa Knepper  
Institute for Justice  
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## EXECUTIVE SUMMARY

This report examines a federal law enforcement practice known as “equitable sharing.” It enables—indeed, encourages—state and local police and prosecutors to circumvent the civil forfeiture laws of their states for financial gain.

Civil forfeiture is the government power to take property suspected of involvement in a crime. Unlike criminal forfeiture—used to take the ill-gotten gains of criminal activity *after* a criminal conviction—with civil forfeiture, police can take property without so much as charging the owner with any wrongdoing.

Owners caught up in civil forfeiture proceedings typically have few legal rights, while police and prosecutors enjoy all the advantages. Worse, most state and federal laws award the law enforcement agencies that take the property at least a cut, if not all, of the proceeds. This direct financial incentive and the limited safeguards for owners combine to encourage the taking of property.

Equitable sharing makes this bad situation worse. Through equitable sharing, police and prosecutors can take property from citizens under *federal* civil forfeiture law instead of their own state laws. From the perspective of law enforcement, this is a good deal: Federal law makes civil forfeiture both relatively easy and rewarding, with as much as 80 percent of proceeds returned to the seizing agency.

Thus, with equitable sharing, state and local law enforcement can take and profit from property they might not be able to under state law. If a state provides owners

greater protections or bars law enforcement from directly benefiting from forfeitures, agencies can simply turn to federal law.

Recent research published in the *Journal of Criminal Justice* shows this is exactly what agencies do when faced with stricter and less

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generous state forfeiture laws—they turn to the feds and keep on pocketing forfeiture money.

And the problem is growing worse. Between 2000 and 2008, equitable sharing payments from the U.S. Department of Justice to state and local law enforcement doubled from about \$200 million to \$400 million. And data from two states, Massachusetts and California, indicate that these figures underestimate the true extent of equitable sharing nationwide.

Forfeiture reform is desperately needed at all levels. But for state reforms to have lasting effects, law enforcement must not be allowed to use equitable sharing to disregard state law. State and local law enforcement should have to follow state law.



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## INTRODUCTION

The Motel Caswell is a family-owned budget motel in Tewksbury, Mass., 30 minutes outside of Boston. Russell and Patricia Caswell have owned and operated the motel for nearly 30 years, since they took over management from Russ’ father in the 1980s. They live next door, raising their grandson and tending to the business. The Caswells expected the motel, now mortgage-free, to provide a nest-egg for retirement.

The U.S. Drug Enforcement Agency (DEA) and Tewksbury police department, however, have other plans for the Caswells’ property. Using a power called civil forfeiture, they aim to take the entire property—worth more than a million dollars—because some guests staying at the motel have been arrested with drugs. Since 1994, the Caswells have rented their rooms more than 125,000 times. Yet, because drug arrests have taken place on roughly 30 occasions over those 6,570 days, the government’s view is: The motel is ours.

Incredibly, the government does not claim that the Caswells are guilty of any crime. Indeed, the DEA and the local police have never made an allegation that the Caswells have been involved in any illegal activity at the motel or anywhere else—only that they own the property on which other people have been arrested for crimes.<sup>1</sup> In ordinary terms, the Caswells are innocent. But with civil forfeiture, “innocent” means something else entirely.

Civil forfeiture is the government power to take property suspected of involvement in a crime. It is different from criminal forfeiture, which is used to take the

ill-gotten gains of criminal activity *after* an individual is actually convicted of a crime. With civil forfeiture, police can take property without so much as charging the owner with a crime.

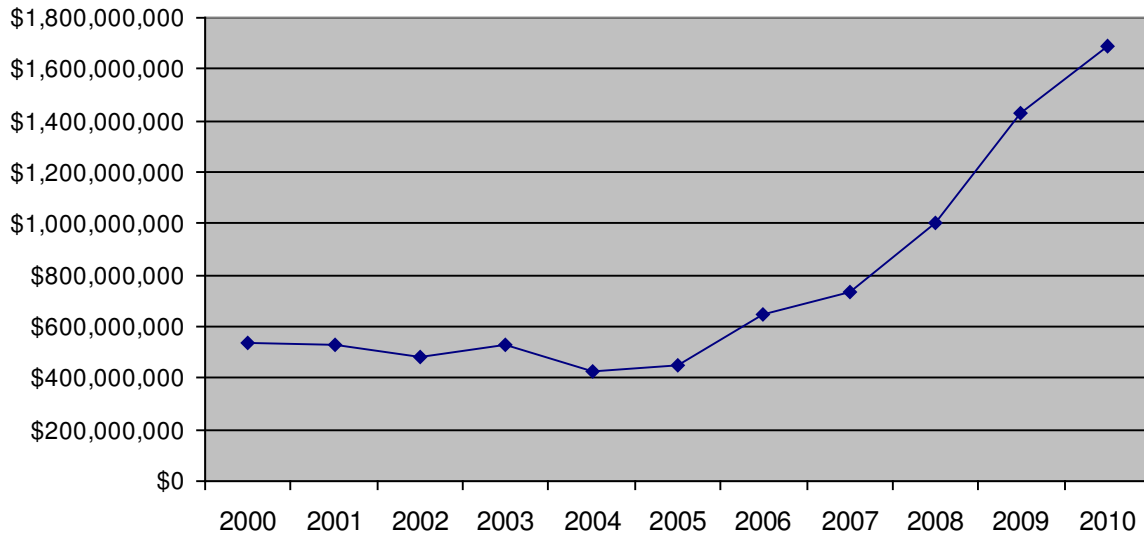
Owners can try to win their property back by raising an “innocent owner” defense, but these are difficult claims to win. Typically, owners must prove that they did not know of or consent to the use of their property as part of criminal activity—or even, as under federal law, that they took all action possible to prevent its use in an illegal manner. This puts owners in the difficult, and often impossible, position of proving what they did not know.

Thus, unless the Caswells are successful in a battle against the overwhelming resources of the U.S. Department of Justice (DOJ) to prove their “innocence,” they will lose their property—without compensation and without being convicted of or even charged with any wrongdoing. This turns the American ideal of innocent until proven guilty on its head.

The Caswells’ plight shows the problems that stem not only from civil forfeiture laws, but also from a federal



Figure 1: Net Assets, Department of Justice Asset Forfeiture Fund, 2000–2010<sup>3</sup>



program called “equitable sharing.” With this program, state and local law enforcement can take property under federal civil forfeiture law instead of state law. Because federal law makes it relatively easy—often easier than many state laws—to forfeit property and returns a generous share of the proceeds to the local agency, equitable sharing enables state and local law enforcement to take property they might not be able to under state law. Indeed, research shows this is just what agencies nationwide do.<sup>2</sup>

And it is what has happened to the Caswells. The Tewksbury police do not stand to get a share of the proceeds of Motel Caswell under Massachusetts civil forfeiture law, but rather under federal law. Under an equitable sharing agreement, the DOJ will pay as much as 80 percent of the proceeds from the motel directly to the Tewksbury police, leaving the Caswells with nothing but the loss and destruction of their life’s work. Not only is it doubtful that the Tewksbury police could successfully take the Caswells’ property under Massachusetts law, but if they did, they would receive only 50 percent of the proceeds.

Equitable sharing thus enables law enforcement agencies to sidestep protections in state law for property owners such as the Caswells. The Institute for Justice has joined with the Caswells and their local counsel at Schlossberg, LLC, to defend their property and argues that the Caswells are innocent owners whose property should not be forfeited.

IJ is also challenging the equitable sharing program itself. IJ argues that equitable sharing creates unconstitutional incentives for local agencies to circumvent state law, violating the 10<sup>th</sup> Amendment to the U.S. Constitution. When federal law pushes local law

enforcement agencies to administer federal forfeiture laws contrary to state policy, it deprives the citizens of those states and their legislature the opportunity to effectively rein in civil forfeiture abuse.

## CIVIL FORFEITURE AND INCENTIVES FOR ABUSE

Although its use is widespread throughout the United States, civil asset forfeiture is not widely recognized or understood. In civil forfeiture the government sues the property, as if the property somehow acted to assist in the commission of a crime. In this way, the government can seize property despite the innocence of its owner. That is why civil forfeiture cases have unusual names such as *United States v. 434 Main Street, Tewksbury, Massachusetts*—the case involving the Caswells.

Under federal law, federal law enforcement agencies keep all of the property and currency they seize for their exclusive use. This direct financial incentive was put into federal law in 1985. Before then, federal forfeiture proceeds went to the general revenue fund of the United States, and Congress then decided how such revenue would be appropriated. Before 1985, forfeiture revenue was modest. After the profit incentive was put into the law, forfeiture revenue exploded—and it has been growing ever since.

As Figure 1 shows, the value of assets in the U.S. Department of Justice’s Asset Forfeiture Fund, the federal government’s largest forfeiture fund, topped \$1 billion for the first time in 2008. It now stands at more than \$1.6 billion.

Table 1: Proceeds Distributed to Law Enforcement Under State Civil Forfeiture Laws

0%	Indiana, Maine, Maryland, Missouri, North Carolina, North Dakota, Ohio, Vermont
50%	Colorado, Wisconsin
60%	Connecticut, New York
63%	Oregon
65%	California
75%	Nebraska
80%	Louisiana, Mississippi
85%	Florida
90%	Illinois, Minnesota, New Hampshire, Rhode Island, Texas
95%	South Carolina
100%	Alaska, Alabama, Arkansas, Arizona, Delaware, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming

Following the federal government’s lead, most states also allow law enforcement to keep some or all forfeiture proceeds. As shown in Table 1, law enforcement receives 100 percent of forfeiture proceeds in 26 states, while another 16 allow police and prosecutors to keep at least 50 percent. Only eight states bar the retention of forfeiture monies by law enforcement.<sup>4</sup>

In addition, the federal government and most states shift the burden of proof from the government to the owner to prove that he or she is innocent of a crime in forfeiture cases. In other words, with civil forfeiture, property owners are effectively guilty until proven innocent. The increased burden (including substantial legal costs) of proving one’s innocence can result in owners abandoning rightful claims to seized property. And if owners do not fight civil forfeiture and the government wins by default, law enforcement agencies are more likely to engage in it.

Table 2 lists states according to the burden they place on innocent owners. In only six states must government prove guilt to forfeit any type of property. In 38 states, owners must establish their innocence. In the other six states, the burden depends on the type of property.

State and federal laws also make civil forfeiture harder on property owners by establishing a lower “standard of proof” under which the government can take the property. The standard of proof in a criminal proceeding is “beyond a reasonable doubt.” That is, the state must demonstrate to the jury that evidence shows beyond a reasonable doubt the accused individual committed a crime. This high standard exists to protect the rights of innocent individuals who might be accused of a crime.

Table 2: Innocent Owner Burden in State Civil Forfeiture Laws

Owner must prove innocence	Alaska, Arizona, Arkansas, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming
Depends on property	Alabama, Indiana, Kentucky, Maine, New Mexico, Utah
Government must prove guilt	California, Colorado, Florida, Kansas, Michigan, Oregon

Table 3 shows the standards of proof required to forfeit property under civil forfeiture laws in all 50 states. Only three states demand that the government show “beyond a reasonable doubt” that the property was part of a criminal act. Most states, 27, use a lower “preponderance of the evidence” standard—basically, the government must show it is more likely than not that the property was related to criminal conduct. This is also the standard in federal law.



Table 3: Standard of Proof in State Civil Forfeiture Laws\*



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

\* Most commonly, in states with two forfeiture standards, the higher one is for the forfeiture of real property.

\*\* State law effectively does not have civil forfeiture.

These three features of modern civil forfeiture law encourage abuse by making the process relatively easy for law enforcement and difficult for property owners to defend against and by providing police and prosecutors a direct financial incentive to pursue property.

## FEDERAL EQUITABLE SHARING

As bad as most state and federal laws are, the federal equitable sharing program makes things even worse. Equitable sharing is a policy by which the federal government and local law enforcement agencies can “share” the proceeds of a forfeiture that is prosecuted by the federal government after being brought to its attention by a local agency. Under the federal Comprehensive Crime Control Act of 1984, state and local law enforcement agencies may work together to initiate federal forfeiture actions as long as the “conduct giving rise to the seizure is in violation of federal law,” such as when a guest at a motel is arrested for certain drug crimes.

Equitable sharing agreements can be used to process and divide the proceeds of property seized during joint operations involving multiple law enforcement agencies. The federal government takes over the property, handles the forfeiture case and then distributes the proceeds to each agency according to their role in the joint effort.

More controversially, the federal government can also “adopt” property from a state or local agency for forfeiture. In adoptive forfeitures, relatively lax federal standards apply and state and local agencies receive 80 percent of proceeds—even if state law is stricter and less generous. Thus, even if state law offers strong protections to property owners and bars law enforcement from keeping what they forfeit, state and local agencies can use equitable sharing to circumvent those rules and take and keep property anyway.

In Massachusetts, for instance, state and local law enforcement agents are limited to seizing property that was

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“used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances.”<sup>5</sup> This contrasts with the federal law, in which federal agents can seize property that merely “facilitates” a drug crime—a far-reaching standard that could allow the government to seize a rental car, for instance, if it was used by someone who happened to be carrying drugs on them. Although it is still relatively easy to seize property in Massachusetts as



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compared to some states, state law places a greater limit on law enforcement agencies than federal law.

Further, under Massachusetts law police may keep only 50 percent of the proceeds of forfeited property; the other 50 percent goes to prosecutors. However, under an equitable sharing agreement, local police can receive as much as 80 percent of proceeds. For the Tewksbury police in the Caswells' case, the difference could be hundreds of thousands of dollars.

## CIRCUMVENTING STATE LAW

The Caswells' case shows how local police can take advantage of federal equitable sharing to secure forfeiture proceeds they might not be able to under state law. But does equitable sharing encourage state and local law enforcement to evade state civil forfeiture laws? The evidence says yes.

In a 2011 study published in the *Journal of Criminal Justice*, researchers Jefferson Holcomb, Tomislav Kovandzic and Marian Williams examined the relationship between state civil forfeiture laws and equitable sharing receipts by state and local law enforcement.<sup>6</sup> They found that in states where civil forfeiture is more difficult and less rewarding, law enforcement agencies take in more equitable sharing dollars. In other words, police and prosecutors use equitable sharing as an easier and more profitable way to

secure forfeiture funds.

As shown in Tables 1 through 3, Holcomb and his colleagues categorized the civil forfeiture laws of all 50 states according to profit motive, innocent owner burden and standard of proof.

From the perspective of state and local law enforcement, federal civil forfeiture law is fairly easy and generous compared to many states. Federal law places the burden of establishing innocence on owners, sets the standard of proof at "preponderance of the evidence" and through equitable sharing will return as much as 80 percent of proceeds to law enforcement.

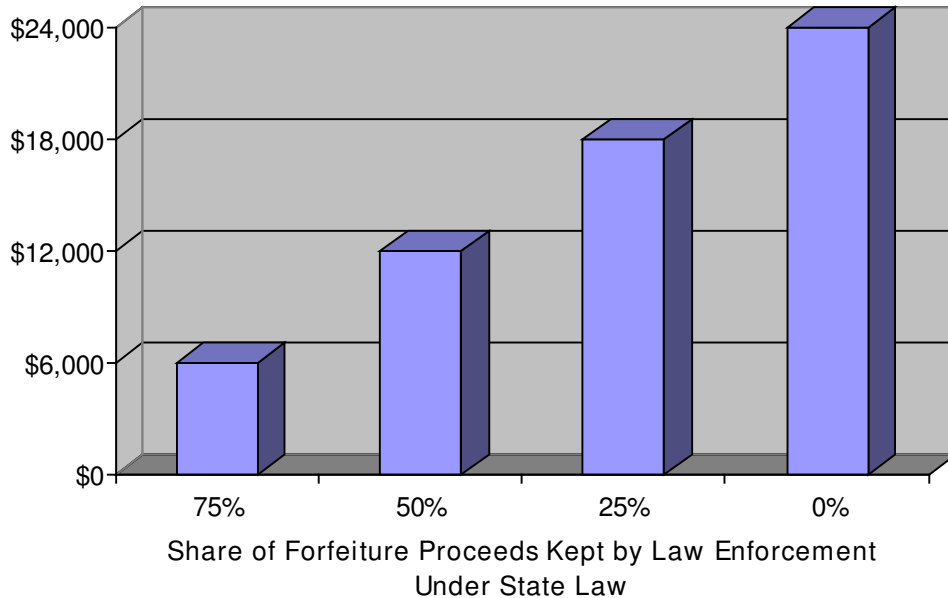
Holcomb and colleagues examined how these

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three dimensions of state civil forfeiture laws correlate with equitable sharing payments to state and local law enforcement agencies.<sup>7</sup> Their results are clear: Agencies in states where civil forfeiture is more difficult and less generous receive more equitable sharing dollars.



*Figure 2: Rise in Equitable Sharing Dollars for an Average-Sized Law Enforcement Agency as Share of Forfeiture Proceeds Under State Law Declines from 100 Percent*



First, the Holcomb analysis found that all three aspects of state civil forfeiture law independently impact the size of equitable sharing payments.

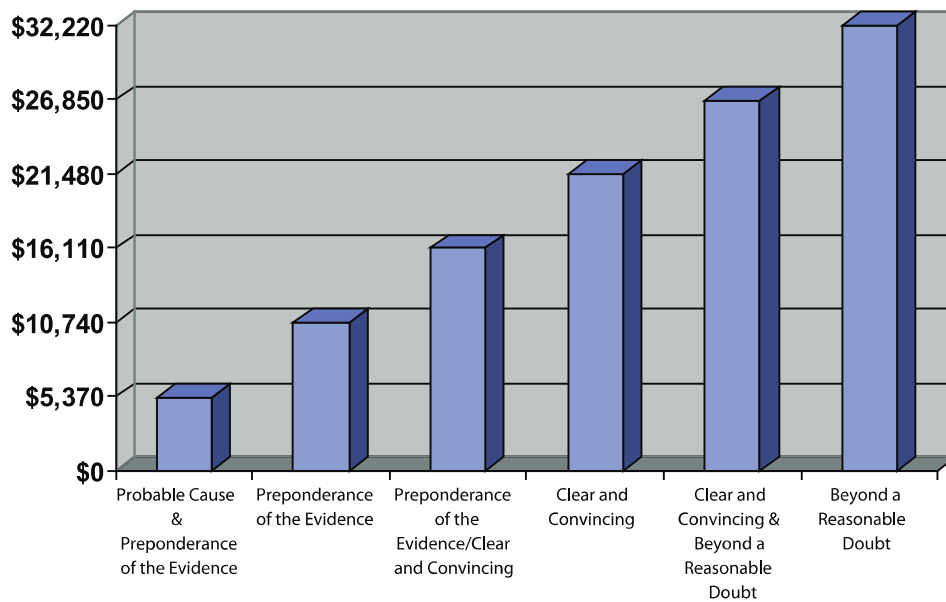
· **Profit motive:** Agencies in less generous states use equitable sharing more. Figure 2 illustrates this effect for an average-sized law enforcement agency, one serving about 300,000 people: Each 25 percentage point *decrease* in agency share of forfeiture proceeds under state law *increases* equitable sharing payments under federal law by \$6,000.

Thus, an average-sized agency in a state that allots no forfeiture proceeds to law enforcement would be expected to take in \$24,000 more in equitable sharing payments than a similar agency in a state with a 100 percent profit motive. Given that an average-sized agency receives about \$120,000 in equitable sharing payments annually, an additional \$24,000 would represent a 20 percent increase.

· **Innocent owner burden:** Placing the burden to show guilt on the government—which is to say, making forfeiture harder for law enforcement—leads to more equitable sharing. An average-sized agency in a presumed innocent state would be expected to take in \$12,840 more in equitable sharing payments than a similar agency in a presumed guilty state. This represents a 10 percent increase in equitable sharing for an average-sized agency.

· **Standard of proof:** Agencies in states that require higher standards of proof for civil forfeiture—again, making forfeiture more difficult—receive more equitable sharing payments. As shown in Figure 3, raising the standard of proof by one level is associated with an increase in equitable sharing payments of \$5,370 for an average-sized agency, or about a 4.5 percent increase.

Figure 3: Rise in Equitable Sharing Dollars for an Average-Sized Law Enforcement Agency as State Standard of Proof Becomes Stricter



Not only do all three aspects of state forfeiture law independently affect the equitable sharing activity of state and local law enforcement, they also act in concert. In other words, Holcomb and colleagues found that making forfeiture more difficult *and* less rewarding leads to greater use of federal law. Specifically:

- When states set higher standards of proof and provide smaller shares of proceeds—making forfeiture both harder and less rewarding—agencies engage in more equitable sharing.
- If the burden of proof is on owners, raising the share of proceeds returned to law enforcement reduces use of equitable sharing, as one would expect. However, if the burden of proof is on the government, making forfeiture more difficult, agencies will turn more to equitable sharing *even if the profit motive increases* under state law. This suggests that placing the burden on government to demonstrate guilt is a significant impediment for law enforcement.
- Raising the standard of proof leads to larger increases in equitable sharing when owners are presumed innocent than when they are presumed guilty. These two procedural barriers to forfeiture work together to encourage more equitable sharing.

Importantly, all of these findings held true—and even became stronger—when Holcomb and colleagues controlled for various factors that could muddy results, such as drug arrests and violent crime rates.<sup>8</sup> This means

that agencies are not engaging in more equitable sharing because they face a larger drug or crime problem than other agencies, but because they face different incentives under state law. Take two police departments alike in size, mission, crime rates and so on. One is in a state with easy and generous forfeiture laws. The other is in a state that makes forfeiture difficult and less rewarding. The second will engage in more equitable sharing than the first.

The Holcomb results show that when making decisions about how to conduct forfeitures, state and local law enforcement consider both the relative ease of the process and the possibility of financial reward. This is compelling evidence that pursuit of profit is a key motivator in civil forfeiture.

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The Holcomb results also accord with other research. An earlier analysis of equitable sharing payments and state laws by Kovandzic and John Worrall reached a similar conclusion.<sup>9</sup> And a study by Charles Kucher also found that stricter state laws are associated with more equitable sharing, though it did not find a statistically significant effect from the share of proceeds returned to law enforcement.<sup>10</sup>



Table 6: State Forfeiture Grades, ranked by Evasion Grade

	Evasion Grade	Law Grade	Final Grade
Maine	A	B+	A-
North Dakota	A	B	B+
Idaho	A	D-	C
South Dakota	A	D-	C
Delaware	A	F	C
Wyoming	A	F	C
Vermont	B	B+	B
Connecticut	B	C+	C+
Oregon	B	C	C+
Louisiana	B	D	C-
Minnesota	B	D	C
Rhode Island	B	D	C-
Utah	B	D-	C-
Alaska	B	F	D+
Montana	B	F	D+
South Carolina	B	F	D+
Iowa	C	D-	D
Maryland	C	B	C+
Missouri	C	B	C+
Colorado	C	C+	C
Nebraska	C	C	C
Wisconsin	C	C	C
Indiana	C	B+	C+
Mississippi	C	D	D+
New Hampshire	C	D	D+
Alabama	C	D-	D
Arizona	C	D-	D
Arkansas	C	D-	D
Hawaii	C	D-	D
Kansas	C	D-	D
Kentucky	C	D-	D
Nevada	C	D-	D+
New Jersey	C	D-	D
New Mexico	C	D-	D+
Oklahoma	C	D-	D
Pennsylvania	C	D-	D
Tennessee	C	D-	D
Washington	C	D-	D
Massachusetts	C	F	D
North Carolina	D	A-	C+
Florida	D	D+	D
Illinois	D	D-	D
Michigan	D	D-	D-
Virginia	D	D-	D-
West Virginia	D	D-	D-
Ohio	F	B+	C-
California	F	C+	D
New York	F	C-	D
Texas	F	D	D-
Georgia	F	D-	D-

In their *Journal of Criminal Justice* article, Holcomb, Kovandzic and Williams highlight some of the concerns their findings raise:

The dependency of police on public resources for their operations is an important check on police power. Self-generating revenues by the police through forfeiture potentially threatens the ability of popularly elected officials to constrain police activities. Perhaps such concerns partially explain the differences in state laws. If the legislators and the public wished for forfeiture to be very easy and rewarding to law enforcement, every state would have low standards of proof, limited innocent owner protections, and all proceeds would go exclusively to the police.<sup>11</sup>

Of course, not every state makes forfeiture easy and rewarding. But through federal equitable sharing, state and local law enforcement can circumvent stringent state laws to secure forfeiture monies anyway.

## GRADING THE STATES

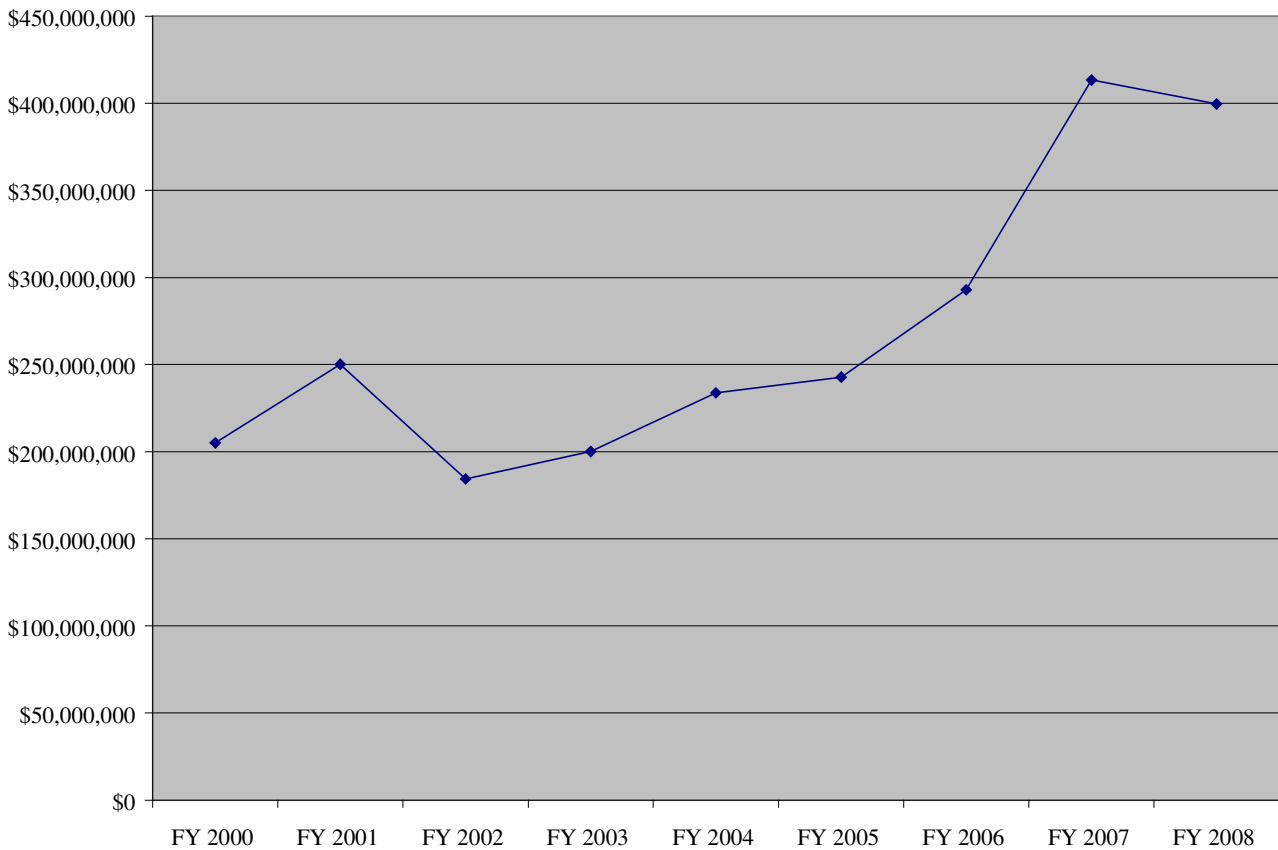
A 2010 report, *Policing for Profit: The Abuse of Civil Asset Forfeiture*,<sup>12</sup> graded state laws according to how well they respect property rights. Laws that set high standards for forfeiture and return small shares—or no share—of forfeiture proceeds to law enforcement earned high marks. But these “law grades” tell only half the story. As Holcomb and others have shown, agencies can and do use equitable sharing to circumvent good laws. So *Policing for Profit* created “evasion grades,” essentially ranking the states according to how much they engage in equitable sharing,<sup>13</sup> and then combined law and evasion grades into a final grade for each state.

Table 6 ranks states according to their evasion grade, and also notes their law and final grades. Looking at equitable sharing alone, the worst states are California, Georgia, New York, Ohio and Texas, all of which received F evasion grades. Florida, Illinois, Michigan, North Carolina, Virginia and West Virginia are not far behind with evasion grades of D. By contrast, Delaware, Idaho, Maine, North Dakota, South Dakota and Wyoming see relatively little equitable sharing.

The evasion and law grades are generally consistent with research findings: States with stricter laws tend to see more equitable sharing. For example, only eight states earned law grades of B or better. Five of those states earned average or below-average evasion grades. North Carolina and Ohio stand out as states with fairly strong laws (graded A- and B+), but very poor evasion grades (D and F).

California and New York also showed sharp disparities between state law grades and equitable sharing activities.

Figure 4: Equitable Sharing Payments to States from the Department of Justice Assets Forfeiture Fund, 2000 to 2008



California earned a slightly above average law grade of C+ but is the most-active state for equitable sharing. New York’s laws earned a grade of C-, poor but better than 35 states; the state earned an F for evasion.

At the opposite end of the spectrum, six states earned grades of F for their laws alone. These are the states with the worst laws and therefore the least incentive to participate in equitable sharing. And in fact, five of those states earned a B or better evasion grade, showing relatively little equitable sharing. Massachusetts, the lone exception, received a C evasion grade.

A handful of states—Illinois, Michigan, Virginia, West Virginia, Georgia and Florida—have both bad state laws and considerable equitable sharing activity.

## EQUITABLE SHARING ON THE RISE

State and local law enforcement are using equitable sharing more than ever. The *Policing for Profit* report charts the growth of equitable sharing payments from the DOJ’s Assets Forfeiture Fund to state and local law enforcement. As Figure 4 shows, these payments doubled from about \$200 million in 2000 to \$400 million in 2008.

The DOJ’s Asset Forfeiture Fund is the largest federal forfeiture fund,<sup>14</sup> and its reporting on equitable sharing payments provides a consistent picture of equitable sharing activity across time and across states. However, it is not the only source for equitable sharing funding. State and local agencies can also secure equitable sharing revenue from the Department of Treasury, other federal sources, other non-federal agencies and interest income. Thus, the DOJ data underestimate the extent of equitable sharing activity.

The *Policing for Profit* report charts the growth of equitable sharing payments from the DOJ’s Assets Forfeiture Fund to state and local law enforcement. These payments doubled from about \$200 million in 2000 to \$400 million in 2008.

For a more complete picture of equitable sharing activity, we made Freedom of Information Act (FOIA) requests of the DOJ for annual agency-level equitable sharing reports for two sample states: Massachusetts and California. Each year, participating agencies must submit a

Table 4: Equitable Sharing Funds Received by Law Enforcement Agencies in Massachusetts and California

	Massachusetts	California
2001	\$5,109,275	NA
2002	\$2,272,184	\$31,048,184
2003	\$3,518,571	\$28,061,106
2004	\$3,299,339	\$34,501,468
2005	\$8,023,267	\$41,533,361
2006	\$3,881,541	\$47,774,115
2007	\$5,189,510	\$57,776,804
2008	\$7,009,598	\$117,556,365
2009	\$5,356,407	\$138,346,184
2010	\$4,938,971	NA
Total	\$48,598,663	\$496,597,587
Average per Year	\$4,859,866	\$62,074,698

report in which they indicate how much equitable sharing funding they received from all sources, how much they spent and what types of expenditures they made. These data also show equitable sharing on the rise—and they reveal more revenue generated through the program than the DOJ data alone.

Table 4 shows the total equitable sharing funds received by law enforcement agencies in Massachusetts and California for the years for which we have agency-level reports.<sup>15</sup> From the low in 2002, Massachusetts agencies have consistently, albeit unevenly, taken in greater amounts of equitable sharing funds, and funds received more than doubled from 2002 to 2010, as shown in Figure

5. Moreover, these data reveal more activity than DOJ payments alone. In 2010, for instance, Massachusetts agencies received \$2,375,152 in equitable sharing payments from the DOJ,<sup>16</sup> but \$4,938,971 from all sources.

For California agencies, equitable sharing receipts have consistently grown over time, with a particularly large jump between 2007 and 2008, as shown in Figure 6. From 2002 to 2009, equitable sharing receipts more than quadrupled for California agencies. And as with Massachusetts, data from the agency-level reports reveal more equitable sharing activity: \$59,308,447 from the DOJ in 2009,<sup>17</sup> compared to \$138,346,184 from all sources.

Figure 5: Equitable Sharing Funds Received by Agency, 2001–2010, Massachusetts

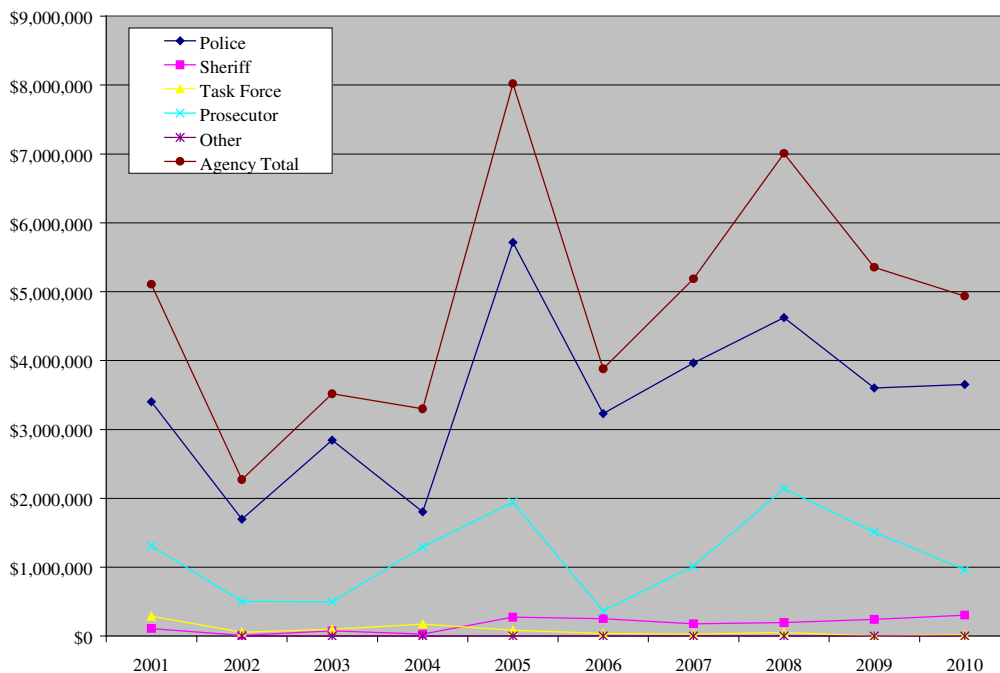
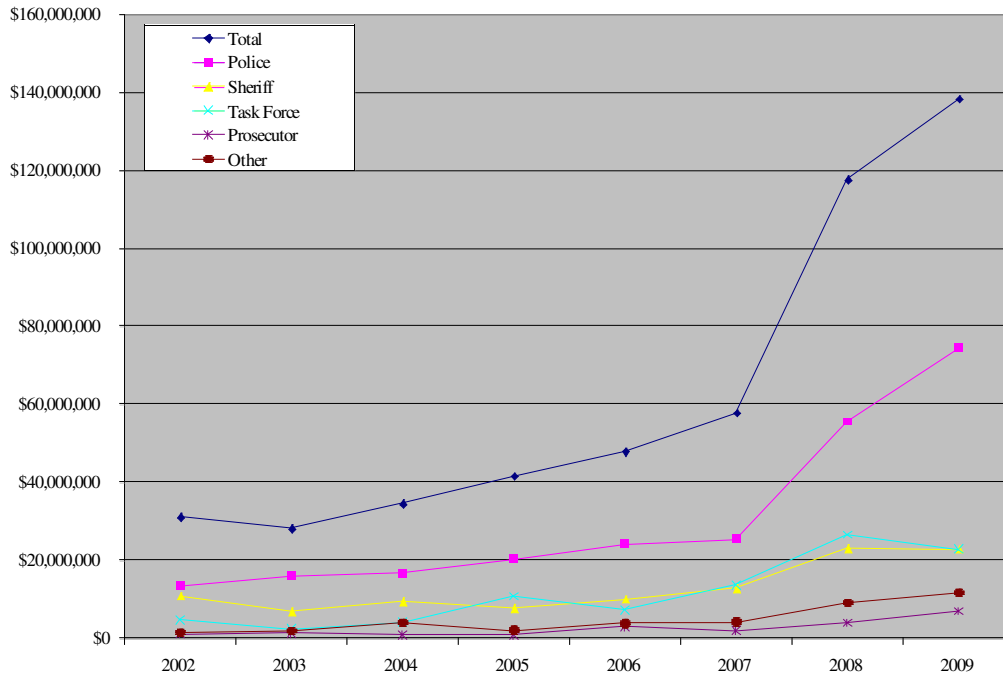




Figure 6: Equitable Sharing Funds Received by Agency, 2002–2009, California



In the 10 years from 2001 to 2010, Massachusetts law enforcement agencies took in \$48.5 million through equitable sharing, as shown in Table 1. Over eight years, from 2002 to 2009, California law enforcement agencies took in \$496.5 million through equitable sharing. Massachusetts agencies have taken in an average of \$4,859,866 annually, while the annual average for California is \$62,074,698.

At first glance, it appears that California police and prosecutors engage in a great deal more equitable sharing than their Massachusetts counterparts. However, the difference could simply be due to California’s much larger population. Therefore, to compare the states more directly, we standardized the data by converting the equitable sharing numbers into per capita receipts, as shown in Table 5 and

Figure 7. We also used only the years 2002 to 2009, since 2001 and 2010 were not available for California. As the totals rows indicate, California almost always took in greater amounts of equitable sharing per capita than Massachusetts, the one exception being 2005. In later years, California’s numbers substantially outpaced those in Massachusetts.

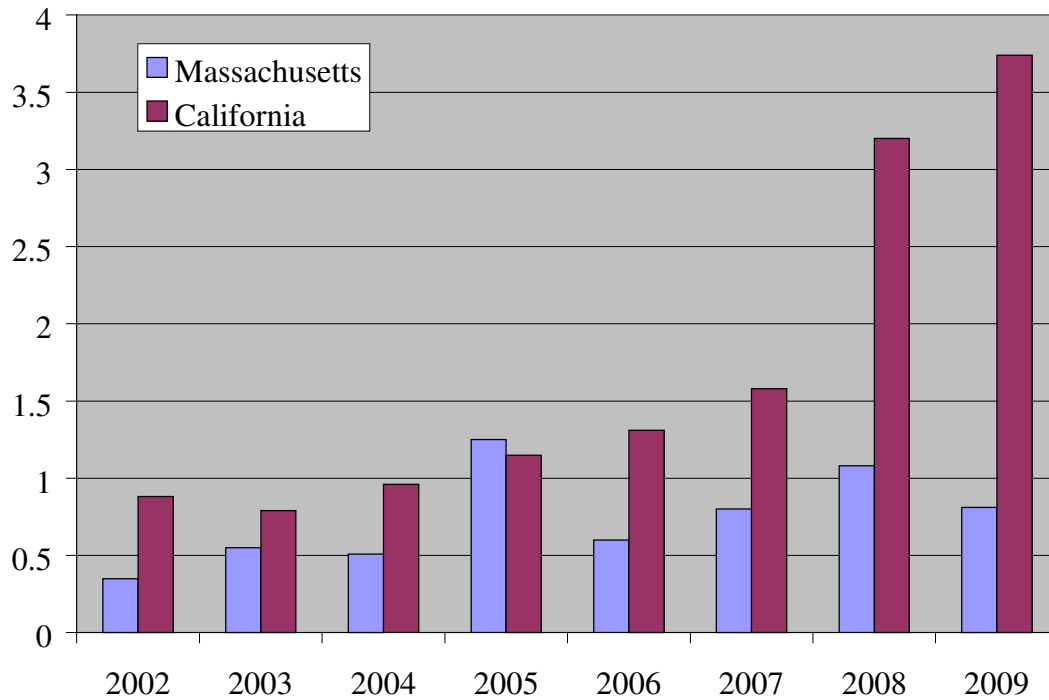
This trend is also present when comparing agency types, except for prosecutors. In the case of the latter, Massachusetts prosecutors consistently received more in equitable sharing receipts per capita than those in California.

Although this comparison looks at only two states, it is consistent with national research findings such as those by Holcomb and his colleagues, as California places stricter standards on forfeiture and returns a smaller share of proceeds to law enforcement than Massachusetts.

Table 5: Equitable Sharing Per Capita 2002–2009, Massachusetts and California

	Massachusetts								
	2002	2003	2004	2005	2006	2007	2008	2009	
Police	0.26	0.44	0.28	0.89	0.50	0.61	0.71	0.55	
Sheriff	0.00	0.01	0.00	0.04	0.04	0.03	0.03	0.04	
Task Force	0.01	0.02	0.03	0.01	0.01	0.00	0.01	0.00	
Prosecutor	0.08	0.08	0.20	0.30	0.06	0.16	0.33	0.23	
Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Total	0.3□	0.□□	0.□□	□□□	0.□□	0.□□	□□□	0.□□	
	California								
Police	0.38	0.45	0.46	0.56	0.66	0.69	1.51	2.01	
Sheriff	0.31	0.2	0.26	0.22	0.27	0.35	0.62	0.62	
Task Force	0.13	0.06	0.11	0.30	0.19	0.37	0.72	0.62	
Prosecutor	0.03	0.03	0.02	0.02	0.08	0.05	0.11	0.18	
Other	0.03	0.05	0.11	0.05	0.10	0.11	0.24	0.31	
Total	0.□□	0.□□	0.□□	□□□	□3□	□□□	3.□□	3.□□	

Figure 7: California Per Capita Equitable Sharing Outpaces Massachusetts




## CONCLUSION

Neither the federal government nor most states offer their citizens much protection from forfeiture abuse. Low legal standards for law enforcement, combined with placing the burden to prove their own innocence on property owners, put people caught up in civil forfeiture proceedings at a serious disadvantage. The financial incentives built into state and federal laws add fuel to the fire by encouraging police and prosecutors to pursue property, even at the expense of other law enforcement priorities.

The federal government’s equitable sharing program makes this bad situation worse. It ensures that even if states raise the bar and lower incentives for civil forfeiture, law enforcement can circumvent these limits. Indeed, research shows this is exactly what police and prosecutors do when faced with stricter and less generous forfeiture

laws—they turn to the feds and keep on pocketing forfeiture money.

That is compelling evidence not only of the problem created by equitable sharing, but also that incentives matter to law enforcement. When decisions are made about civil forfeiture, the ease of the process and the possibility of financial reward are key factors. But allowing law enforcement to self-generate revenue undermines democratic controls, distorts law enforcement priorities and puts the property of innocent citizens like the Caswells at risk.

To protect innocent citizens and ensure the impartial administration of justice, forfeiture reform is desperately needed at all levels. But for state reforms to have lasting effects, law enforcement must not be allowed to use equitable sharing to disregard state law. 

## ENDNOTES

- 1 See Compl. for Forfeiture *In Rem, United States v. 434 Main Street*, No. 09-11635-RGS (D. Mass. Sept. 29, 2009).
- 2 Holcomb, J. E., Kovandzic, T. V., & Williams, M. R. (2011). Civil asset forfeiture, equitable sharing, and policing for profit in the United States. *Journal of Criminal Justice*, 39, 273-285.
- 3 Williams, M. R., Holcomb, J. E., Kovandzic, T. V., & Bullock, S. (2010). Policing for profit: the abuse of civil asset forfeiture. Arlington, VA: Institute for Justice.
- 4 Data for Tables 1 through 3 come from Holcomb et al., 2011, and Williams et al., 2010.
- 5 Mass. Ann. Stat. 94c §47(c)(3).
- 6 Holcomb et al., 2011. This article updates an earlier analysis reported in Williams, et al., 2010.
- 7 Holcomb and colleagues drew on a nationwide sample of 536 law enforcement agencies and examined equitable sharing payments from 2000 to 2004, averaging payments across the five-year period to smooth out any atypically large or small annual payments. They also divided each agency's five-year average by the size of the population it serves, arriving at a per capita measure of equitable sharing payments, so that the measure is not skewed by larger agencies. For further details on methods, see Holcomb, et al., 2011.
- 8 For a list of all control variables and their effects on the analysis, see Holcomb, 2011.
- 9 Worrall, J., & Kovandzic, T. (2008). Is policing for profit? Answers from asset forfeiture. *Criminology and Public Policy*, 7, 219-244.
- 10 Kucher, C. (2005). *Asset forfeiture: State restrictions and equitable sharing*. Master's Thesis, University of New Hampshire, Durham, NH.
- 11 Holcomb et al., 2011, p. 283.
- 12 Williams, et al., 2010.
- 13 This grade was created in a multi-step process. First, a three-year average of equitable sharing was created using data from 2005, 2006 and 2007. Second, the equitable sharing totals for each state were adjusted, or standardized, by dividing each state's equitable sharing total by its average rate of drug arrests for 2005, 2006 and 2007, taken from the FBI's Uniform Crime Report. (Drug arrest rate reflects the number of drug arrests per 1,000 people in the population.) Third, because the adjusted equitable sharing distribution was skewed, the data were transformed into natural logs to normalize the distribution. Fourth, the logged data were transformed into z-scores and grades assigned where z-scores of less than -1.5=A, -1.5 to -.5=B; -.5 to .5=C; .5 to 1.5=D; and greater than 1.5=F.
- 14 Each year from 2000 to 2008, the DOJ's forfeiture fund contained roughly twice the assets as the Treasury Department's fund. See Williams et al., 2010, p. 32.
- 15 California and Massachusetts data were requested from the DOJ at different times and for different purposes, resulting in a slightly different coverage of years.
- 16 U.S. Department of Justice. (2010). Massachusetts. Retrieved July 1, 2011, from <http://www.justice.gov/jmd/afp/02fundreport/2010affr/states/massachusetts.htm>.
- 17 U.S. Department of Justice. (2009). California. Retrieved July 1, 2011, from <http://www.justice.gov/jmd/afp/02fundreport/2009affr/states/california.htm>.



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