

## Taking cash into custody Across U.S., police dodge state seizure laws

*KAREN DILLON 2000, The Kansas City Star*

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Police and highway patrols across the country are evading state laws **to** improperly keep millions of dollars in cash and property seized in drug busts and traffic stops.

Most states don't want law enforcement agencies **to** profit so easily from such confiscations - they see it as a dangerous conflict of interest. For that reason, they have passed laws blocking seized property from going directly back **to** police, and many states designate seizures **to** be used for other purposes, such as education.

But a yearlong examination by The Kansas City Star reveals that police agencies in every one of more than two dozen states checked by the newspaper have used federal law enforcement **to** circumvent their own laws and keep most of that money for themselves.

It works this way: When police seize money, they call a federal agency instead of going **to** state court **to** confiscate it. An agency such as the Drug Enforcement Administration accepts the seizure, making it a federal case. The DEA keeps a cut of the money and returns the rest **to** police. State courts - and their generally more-restrictive forfeiture laws - are bypassed altogether.

Law enforcement says that's not illegal and that without the money, police would be handcuffed in fighting crime. But millions of dollars that lawmakers in some states have designated for education, drug treatment programs and other purposes instead end up back in the hands of police.

For example:

A North Carolina State Highway Patrol trooper stopped a driver last year on Interstate 95 for tailgating. A police dog signaled drugs were in the Toyota, where troopers found \$105,700 and two grams of marijuana. But the driver denied owning either the drugs or the money. The highway patrol gave it **to** the DEA, which returned more than \$80,000 **to** the state patrol, even though North Carolina law generally requires sending seized money **to** education.

In June a Georgia trooper stopped a 1996 Monte Carlo for speeding on I-95. After the driver and passengers gave conflicting stories, the trooper searched the car and found a hidden compartment containing \$7,000, which the driver said was from savings.

The patrol turned over the money **to** the DEA, which in January returned \$5,440 **to** the patrol. Under Georgia law, forfeited money should go **to** the state's general fund.

In 1996, the Missouri Highway Patrol stopped a Volkswagen Golf for speeding, searched it because the occupants seemed suspicious and found \$24,000. No drugs were found and no one claimed the money. The patrol gave it **to** the DEA **to** be forfeited, the legal term for confiscation.

(The case took a bizarre turn last year when a family that bought the car at auction discovered an additional \$82,000 in the gas tank.

The DEA took that money, too.)

The Star reported last year that police in Missouri were keeping millions of dollars and bypassing state law, which sends forfeitures **to** a public school fund.

But beyond money diverted from public funds, many critics are just as troubled by the weakening of a basic American civil liberty - the Bill of Rights protection against improper search and seizure.

Owners who want **to** recover seized property usually face a much tougher road in federal court than they would under their own state laws. That continues despite a federal law passed last month that will place some limits on forfeiture.

The federal hand-offs, critics say, also create an opportunity for police **to** profit from their own actions. Indeed, they trace an increasing outcry over aggressive or illegal searches by police nationwide back **to** the profit motive.

"If you think that by conducting an illegal search and seizing people on the highway you can increase the number of times where you can take assets, it is going **to** become a big motivating force," said Ira Glasser, executive director of the American Civil Liberties Union.

This may be one of those rare issues that elicits protests across the political spectrum - from the ACLU **to** the National Rifle Association.

Americans don't realize that forfeitures often occur **to** "ordinary people who happen **to** find themselves in a situation in which they are simply suspected of having been somehow involved in criminal activity, whether those suspicions ever prove out or not," said Roger Pilon, a vice president at the Cato Institute, a Libertarian think tank.

"The line between a free society and a police state is usually breached in small steps."

But many police complain that state laws are too restrictive, sometimes preventing them from taking the money that fuels drug operations.

Others readily admit they avoid state laws because they need **to** use seized money **to** fight the war on drugs - their own cities and states may not provide the funding otherwise.

"A lot of state agencies, like the GBI, prefer **to** work federal cases because we know it will go directly into our asset forfeiture bank," said Mark Jackson, director of legal services for the Georgia Bureau of Investigation.

Some federal officials contend the cases collected by the newspaper prove nothing.

"In a country this big, you can find cases all over the lot," said Jerry McDowell, director of the Justice Department's asset forfeiture and money laundering division. "I don't think police agencies are in the business of profiting."

Besides, he said, it's legal for police **to** send seizures **to** federal agencies because most state laws do not specifically prohibit that.

"We certainly don't want **to** subvert state law, and we don't want states **to** subvert our law," McDowell said.

But most states do prohibit simply handing off seizures - their laws give jurisdiction over seizures **to** state courts, The Star has found.

What that means, say legal experts and judges who have examined the little-known state provisions, is that police cannot simply hand off seizures **to** federal agents **to** avoid state requirements. They need a court order first.

One federal court in a Louisiana case even derisively likened the evasion maneuver **to** a trick football play. The court wrote:

"NFL sportscasters might call the handoff from the Sheriff's Office **to** the DEA, followed by the lateral back from the DEA **to** the Sheriff's Office, a 'flea-flicker.' "

Safeguard erodes

Forfeiture itself is not new - many colonists fled England in part because the king's law allowed forfeiture, but it followed them **to** America.

John Hancock, the first signer of the Declaration of Independence, was defended by John Adams when the Crown seized his ship for failure **to** pay a despised tax on its cargo of Madeira wine.

James Madison, Thomas Jefferson and other founding fathers determined forfeiture would be used only on a limited basis - **to** seize foreign ships for failure **to** pay customs duties, for example.

As a result, the Bill of Rights protects Americans from illegal searches and seizures: No person shall "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Two hundred years later, much has changed with the advent of the war on drugs.

In passing a 1984 law, Congress thought that if federal and local law enforcement agencies cooperated more closely, they could shut down drug operations by confiscating dealers' money.

Federal agencies would share assets they seized in drug busts with local police who helped them. That would reimburse police for the cost of helping **to** fight the war on drugs.

"The intent was **to** permit the feds **to** share with state and local law enforcement when there were truly federal cases," former U.S. Rep. William J. Hughes, the chief sponsor of the bill and a New Jersey Democrat, said in a recent interview.

But it was up **to** the Justice Department **to** write the guidelines **to** implement the law - and that's where critics say the intent of the law was twisted.

In addition **to** addressing joint investigations led by federal agencies, the Justice guidelines created a process called "adoption."

Under adoption, state and local police could give their seizures **to** the federal government - even if a federal agency had not been involved.

The Justice Department "turned around and permitted the forfeiture laws **to** be used basically **to** circumvent state law," Hughes said.

As a result, private citizens are now more vulnerable **to** forfeiture because circumvented state laws often provide more protections than federal forfeiture laws.

For example, some state laws **protect** people from having property forfeited by police unless they're charged with a felony.

But under federal law, authorities don't even need a criminal charge **to** forfeit property.

In fact, experts estimate that the great majority of forfeitures occur without a criminal charge.

Most state laws require that forfeitures be ordered by a judge. Federal law enforcement has the power **to** order forfeitures without a judge - and does in most cases.

And it's costly **to** contest a federal forfeiture. Defense attorneys estimate it costs at least \$10,000, so many won't even accept a case unless the value of the seizure is large.

Although many people whose property is seized are no doubt guilty of a crime, that doesn't mean all are.

Charlotte Carroll, a disabled, 64-year-old Maryland woman, could lose her house because police found a third of an ounce of cocaine and other drugs that some of her children left there.

Under Maryland law, a house usually can't be forfeited without a criminal conviction. Police tapped the federal government **to** forfeit the three-acre property, which has been in Carroll's family for a century.

"I got sick, so sick in my stomach and started crying," Carroll said. "I'm just praying."

Carroll, who has osteoarthritis and receives \$500 a month from Social Security disability, has never been convicted of a crime, her attorney said.

"The state can't take her house, so they run **to** the feds," said the attorney, Stephen F. Allen.

Carroll continues **to** live in the home while Allen fights the forfeiture.

David Salem, assistant U.S. attorney, described the forfeiture as a "hybrid adoption" because federal agents were aware of the police investigation but were not involved in the searches.

Salem also said the forfeiture would be justified because Carroll didn't take enough steps **to protect** her property, even though she says she evicted her children and changed a lock before proceedings began.

"She claims she changed a lock on a door, though I'm unclear which door it is," Salem said. "She claims she took steps that even if I would credit them as true, the government believes them **to** be insufficient **to** justify innocent ownership. There was no effect. That didn't keep the children out of the house."

It's no accident that many state laws have tougher forfeiture standards than federal law, legislators say.

"We have tried **to** make sure that people who are subject **to** forfeitures have some basic rights," said Georgia Rep. Jim Martin, a Democrat and chairman of the Judiciary Committee.

And some of those protections are erased when police give the money **to** federal law enforcement.

Using the feds

Not all police departments send forfeitures **to** federal agencies, but many that do candidly acknowledge it.

"Everybody uses the federal system," said Lt. Harry Kearley of the Alabama Bureau of Investigations.

Sometimes, police explain, they believe money they seize is linked **to** drugs, but they can't prove it under state standards, and they don't want **to** give the money back **to** a suspected drug dealer. Federal law lets them take the money out of the owner's hands.

For example, police in Azusa, Calif., used easier federal requirements **to** take at least one forfeiture worth more than \$450,000 **to** them.

In 1998, an officer stopped a driver for improper use of his turn signal and searched the vehicle when the driver said it didn't belong **to** him. The officer found \$611,500 in a hidden compartment. A dog signaled the presence of drug residue on the cash.

**To** forfeit the money under state law, police usually need a felony conviction.

But police found no drugs and sent the driver on his way.

Soon after, the department gave the money **to** a federal agent.

"The reality is there are situations under which California law will not permit forfeiture, and federal law will," said Andy Cuellar, a deputy district attorney in Alameda County, Calif.

"There is very little California can do about it."

An Alaska case shows just how strong federal powers are.

Fairbanks police had seized \$44,850 in cash from Perry Johnson after finding cocaine in his home. But charges were dismissed because of an illegal search. Police knew they couldn't keep the money under state law, so they gave it **to** the DEA for adoption.

The state Supreme Court ruled in 1993 that police had no right under state law **to** give the money **to** the DEA. Under federal law, though, police could keep the money, so the city wrote a cashier's check **to** Johnson for \$58,654, which included interest, according **to** court records.

But the DEA seized that money, too, saying it could be traced **to** drug transactions. The federal government returned 40 percent **to** 60 percent **to** Fairbanks police, a police official said.

High stakes

Forfeitures can mean a lot of money for police.

The Justice Department says it accepted \$208,454,000 in seizures from state and local police from October 1996 through March 1999.

But that figure is still being audited because the Justice Department has not published an annual forfeiture report since 1996, although the law requires the report **to** be produced each year.

In fact, the \$208 million total is almost certainly low.

Over one period, the Justice Department reported that Missouri police gave federal agencies only half as much as the state auditor found in just a sampling of cases.

Whatever the nationwide total, forfeitures can quickly add up for individual departments.

In 1997 and 1998, the St. Louis Metropolitan Police Department received back more than \$2.5 million.

In 1998, the Georgia Bureau of Investigation took back \$1.7 million.

(Both those figures include proceeds from joint investigations.)

And in a single case in Indiana, a state trooper stopped a truck for speeding on Interstate 70. Troopers found \$811,470 and gave it **to** the DEA, which this year returned almost \$500,000 **to** the state police and \$121,000 **to** a sheriff's department that helped.

Indeed, enough is at stake that police work with federal agencies no matter what their state law may be.

For example, police in some states that award forfeiture money **to** special funds purposefully divert the money so it can end up in their coffers.

Wisconsin law mandates that forfeiture money goes **to** public schools, but only \$16,906 went into Wisconsin's education fund during the year ending in June 1999, according **to** the state treasury department. During just six months of the same period, police gave \$1.5 million in seizures **to** the federal government.

In Kentucky, no forfeited money has gone into a substance abuse fund for at least four years, even though some should under state law.

In fact, The Star found that police circumvented their laws even in states that would have given them back much of their seizures had they gone through state court.

Maj. Gale T. Griess of the Nebraska State Patrol said the patrol hands off most seizures **to** federal agencies so it doesn't have **to** split the money with education, as state law requires.

In Kansas, police are allowed most of the money back under state law. Nonetheless, the Kansas Highway Patrol admits handing off money **to** federal agencies.

And surprisingly, even in states such as Alabama that let law enforcement keep all the forfeiture money after costs, police still can be found giving their seizures **to** federal agencies. The reason: Forfeitures are easier under federal law.

Law enforcement officials say police are justified when they make that choice.

"If they are out enforcing the law, and they are seizing property from criminals, and they are doing it in conjunction with the federal government, they are not getting around (state) law, they are helping enforce federal law," said McDowell of the Justice Department.

State roadblocks

But The Star found that more than two-thirds of all states appear **to** prohibit handing off money **to** federal agencies without permission of a state court.

Those states have requirements that courts have called "turnover orders." Many of the provisions read like the one in Illinois:

"Property taken or detained under this section ... is deemed **to** be in the custody of the law enforcement department or agency employing the seizing officer subject only **to** the orders and judgments of the circuit court having jurisdiction over the forfeiture proceedings."

That means only a state judge can transfer a seizure **to** a federal agency, legal experts say.

"This statute is not difficult at all," said David Harris, a University of Toledo law professor and constitutional expert. "The state court has jurisdiction."

A half-dozen state and federal court decisions have backed that interpretation.

"A local police department may not take seized property and just pass it on as it pleases **to** the FBI in flagrant disregard of state laws," according **to** a federal circuit court opinion in an Illinois case.

Gene Zoegtlin, legislative counsel for the International Association of Chiefs of Police, said he was familiar with such provisions but didn't know enough about them **to** discuss them. He referred questions **to** the Justice Department, which didn't respond.

But even some prosecutors concede police can't just hand off forfeitures.

Under Alabama law, a court must decide when **to** transfer seizures **to** a federal agency, not police, said Yvonne Saxon, Alabama assistant attorney general.

"If you read the statute literally, there is no choice," Saxon said.

When questioned, police offer a number of reasons for not following turnover orders:

They did not know the law existed.

They did not really seize the money - they were only holding it until a federal agency could officially seize it for forfeiture.

Money seized on an interstate highway may be involved in interstate drug trafficking, and therefore is a federal matter.

Police officers sometimes are not really acting as local police - they've been deputized **to** be federal agents, even though they are still paid by local or state governments. And cash becomes federal property when a deputized officer picks it up, they say.

For its part, the DEA says a state case becomes federal if police investigating the case ask a DEA agent **to** come **to** the scene of the crime. "That agent can seize the asset on behalf of the DEA and initiate a federal forfeiture proceeding," the DEA wrote in response **to** questions from The Star.

Critics say such reasoning is legally dubious and seems an attempt **to** obscure the real issue - police want the money, and that generally requires evading their state laws.

Indeed, police say they need the money if they are **to** continue the war on drugs. If they lose forfeiture money, they say, local governments are unlikely **to** replace it.

For example, Capt. Ruben Davalos, head of the special investigations unit for Albuquerque, N.M., police, pointed out that his unit costs about \$1 million a year, of which the city only funds about \$250,000.

Joseph McNamara, former San Jose and Kansas City police chief, said city officials can take some of the blame for the federal hand-offs.

He recalls one year in San Jose his department's tentative budget had no money for equipment, so McNamara asked the city manager why.

"He kind of waved his hand dismissively and said, 'Well, you guys seized \$4 million last year, I expect you **to** do better this year,'" McNamara said.

State law doesn't account for the cost of doing drug investigations, so police are justified in bypassing it, said Missouri Highway Patrol Sgt. Tim Rousset, who heads a task force in southwest Missouri.

"There was once a state law that said black people and white people would go **to** different schools," Rousset said. "Just because there is a state law doesn't necessarily mean that that state law is correct."

But the end never justifies the means, especially in law enforcement, said Eric Sterling, president of the Criminal Justice Policy Foundation, a Washington think tank.

"When a police officer on patrol understands the chief is saying it's OK for us **to** keep property that is not ours, the chief is sending a very bright, neonlike message," Sterling said.

"The rules don't matter."

Besides, others say, police who use forfeits **to** fund themselves end up on a treadmill.

"The real narcotic here is the money," said Glasser of the ACLU. "It becomes a stream of income that they learn not **to** do without and then they have **to** generate more of it."

Cash register

Oddities, lessons and lore from police seizures around America Step out of the car

Let's say a police dog signals there are drugs in your car. That's not enough evidence for police **to** search.

They need something more, and that's where it gets interesting. Here are some reasons for searches listed in police and court records:

Conflicting stories, such as a driver claiming **to** be a welder but who has smooth hands.

Items strewn about the car, such as fast-food bags, empty doughnut boxes, trash bags or personal hygiene items. (That shows the driver is traveling fast and hard, police say.)

Occupants act nervous.

Strange odors in the car, even from air fresheners, which police say could hide the scent of drugs.

Passengers offer identification before being asked.

Out-of-state license plates.

Fluffy is safe

A couple of items from the Kansas Basic Rules of Asset Forfeiture, distributed **to** law enforcement:

Never seize anything that eats. Animals die, require special care, are messy and hard **to** store.

Never seize anything that you wouldn't buy at a garage sale. WHAT YOU SEIZE IS WHAT YOU GET! Realize that all that glitters is not gold.

Don't be greedy with your colleagues. Establish fair shares as early as possible.

A legal tip

Sure, many people worry that police have a conflict of interest if they get **to** keep cash they seize.

But what about those judges in Louisiana?

Under state law, each time a judge declares property forfeited, a court fund gets 20 percent of the value.

In other states, prosecutors get a cut. One Indiana county prosecutor's office got \$40,000 this year simply for reviewing and signing a report transferring a case **to** a federal agency.

They can do that?

Local law enforcement suspected that Michael Nieman, a jeweler in Hamilton County, Ohio, was involved in drugs. They took \$1 million in cash and jewelry from Nieman after he was murdered in 1998.

The county prosecutor declined **to** forfeit the estate, which under Ohio law should then have gone back **to** Nieman's teen-age daughter. But the sheriff gave the estate **to** the Drug Enforcement Administration.

"It is absolutely incredible," said Robert Andrews, an attorney for the estate. Nieman's daughter is fighting in federal court **to** get it back.

The little van that could

A \$400 1979 Chevrolet van played the lead role in an important legal case.

When Batavia, Ill., police stopped Elizabeth Anderson for suspected drunken driving, they found 3 1/2 ounces of marijuana in the van.

Although the van was old, police turned it over **to** the federal government for forfeiture. After two years, in 1991, Anderson's attorney won the van back in a ruling that limited the ability of police **to** transfer property **to** a federal agency.

Legal scolding

In recent years, courts have criticized the federal government's conduct in several cases in which it accepted seizures from local police. Here are excerpts from a few of them.

A local police department may not take seized property and just pass it on as it pleases **to** the FBI in flagrant disregard of state laws...

- United States Court of Appeals, Seventh Circuit, in United States v. One 1979 Chevrolet C-20 Van

...we believe the government's conduct in forfeiture cases leaves much **to** be desired.

- United States Court of Appeals, Seventh Circuit, in United States v. \$506,231

... the actions of the federal and state agents...would have constituted illicit money laundering if perpetrated by private parties.

- United States Court of Appeals, Fifth Circuit, in Jeffrey M. Scarabin v. Drug Enforcement Administration

These complete court opinions as well as turnover statutes can be read on The Star's Web site at [kcstar.com](http://kcstar.com).

Forfeiture glossary

These are forfeiture terms that are commonly used. Definitions are based on those in "Black's Law Dictionary" and a U.S. Department of Justice glossary.

SEIZURE: The act of taking possession of property that is involved in a crime or is the proceeds of a crime.

FORFEITURE: Divesting someone of property without compensation. Generally occurs after a seizure, and is the final act of confiscating property.

ADOPTIVE FORFEITURE: An adoption occurs when state or local police investigate a case without federal help, seize property and ask federal law enforcement **to** forfeit it. The process was established in Justice Department guidelines **to** a 1984 law.

JOINT INVESTIGATION: An investigation in which federal, state and local law enforcement agencies join forces.

CASE LAW: A law based on judicial decisions rather than legislative action.

ASSET: Any property that has the possibility of being seized and then forfeited.

INNOCENT OWNER: A legal defense in a forfeiture case. An owner must be able **to** show he did not have knowledge or involvement in the offense or had taken steps **to** prevent the property from being used in the offense.

What they say

"We have become forfeiture junkies."

- Nick Pastore, retired New Haven, Conn., police chief and research policy fellow at the Criminal Justice Policy Foundation.

About the series

Research for this series began last year after The Kansas City Star printed stories showing that police in Missouri had found a way **to** keep millions of dollars in drug money seizures.

Under state law, money seized in drug busts is supposed **to** go **to** public education, but Missouri police often handed the money **to** federal agencies, which kept 20 percent and passed the rest back **to** police.

Reporter **Karen Dillon** then studied constitutions and forfeiture laws in all 50 states, as well as thousands of pages of federal and state forfeiture policies, police documents, court cases, the Congressional Record and committee testimony.

In order **to** gauge what police were doing nationwide, **Dillon** focused on 30 states, which she chose based largely on the diversity of their laws and geography. **Dillon** then conducted hundreds of interviews with legal experts and law enforcement officials at federal, state and local levels.

Today

Police nationwide evade their own state laws **to** keep money they seize. A-1

A sampling of states **to** show how police operate in each, no matter what the law requires. A-14 Monday

Congress has lost a golden opportunity **to** stem the flow of seizure money **to** local police. A new federal law that limits forfeiture powers is not nearly as effective as proclaimed.

About the staff

**Karen Dillon**, 48, is an investigative projects reporter who has worked at The Star since 1991. She was one of three reporters who won a George Polk Award in 1998 for a series of stories on the NCAA. **To** contact her, call (816) 234-4430 or send e-mail **to** kdillon@kcstar.com.

Kevin Anderson, 42, shot the photographs. He has been with The Star for 13 years and has worked on several other projects, including "Divided We Sprawl."

The series was designed by Greg Farmer, assistant managing editor/universal desk. Gentry Mullen and John C. Sopinski produced the graphics.

The series was edited by Craig Nienaber, projects editor. Patricia Hardin was the copy editor.

**Caption: "I'm just praying," says Charlotte Carroll (right), a Brookeville, Md., woman who could lose her house because police found drugs that some of her children left there. Pictured with her is her brother Dennis Carroll and her granddaughter Tonya Carroll.**

**"This has taken on a life of its own. It's Frankenstein's monster."- David Harris, law professor at the University of Toledo**

**"I think most police chiefs will say a forfeiture program is designed primarily to keep the profit out of crime."- Gene Zoegtlin, legislative counsel for the International Association of Chiefs of Police**

**"The conflict of interest here is so stark ... because the effort by law enforcement agencies to get around state law is so blatant." - Roger Pilon, a vice president of the Cato Institute**

**"The reasons for police behavior really to circumvent state laws is usually to obtain the most just result under the particular circumstances that face them."- Jerry McDowell, director of the Justice Department's asset forfeiture division**

**"Adoptive forfeiture invented the process that circumvented the rights of the states."- Former U.S. Rep. William J. Hughes, who helped write the federal forfeiture laws**