

**REVERSE ROBIN HOOD: THE TALE OF HOW
TEXAS LAW ENFORCEMENT HAS USED CIVIL
ASSET FORFEITURE TO TAKE FROM PROPERTY
OWNERS AND PAD THE POCKETS OF LOCAL
GOVERNMENT—THE RIGHTEOUS HUNT FOR
REFORM IS ON**

Comment*

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** Selected as the Book 4 Outstanding Student Article by the Volume 46 Board of Editors. This award was made possible through generous donations to the Texas Tech Law Review and by Kaplan.

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I. INTRODUCTION: TEXAS LAW ENFORCEMENT AND ITS BAND OF NOT SO MERRY MEN	

August 31, 2007, is a day that James Morrow will never forget.¹ As he was driving through Tenaha, Texas, on his way to visit his cousin in Houston, police pulled the thirty-two-year-old African-American man over for “driving too close to the white line.”² While this normally would have been a routine traffic stop, what happened next sparked a class action lawsuit, considerable media attention, and a serious examination into the statutes surrounding civil forfeiture in the United States.³ Instead of giving Morrow a ticket and sending him on his way, the police officer asked Morrow to get out of his car so that he could search it.⁴ After thoroughly searching the vehicle, the officer found \$3,969 and two cell phones.⁵ Upon finding them, the officer promptly confiscated both the cash and property.⁶ The officer then arrested Morrow, accusing him of money laundering for doing nothing more than carrying cash in his car.⁷ Later, at the police station, the officer gave Morrow a startling ultimatum: he could either sign away the cash and cell phones to the Tenaha Police Department or he could stay in jail and be prosecuted for money

1. *Morrow v. City of Tenaha, et al.—Plaintiff Biographies*, ACLU (Aug. 14, 2012), <https://www.aclu.org/criminal-law-reform/morrow-plaintiff-biographies> [hereinafter *Plaintiff Biographies*, ACLU].

2. James Drew, *East Texas DA Faces Civil Rights Lawsuit Without Government Help*, DALL. NEWS (Nov. 26, 2010, 3:17 PM), <http://www.dallasnews.com/news/crime/headlines/20100122-East-Texas-DA-faces-civil-rights-860.ece> (internal quotation marks omitted); *Plaintiff Biographies*, ACLU, *supra* note 1; see Kasey L. Higgins, “Shiver Me Timbers!” *Civil Asset Forfeiture: Crime Deterrent or Incentive for the Government to Pillage and Plunder Property?*, 4 PHX. L. REV. 771, 779–80 (2011); Mary Murphy, Note, *Race and Civil Asset Forfeiture: A Disparate Impact Hypothesis*, 16 TEX. J. C.L. & C.R. 77, 78 (2010); see generally TEX. TRANSP. CODE ANN. § 545 (West 2011 & Supp. 2013) (lacking a required acceptable distance from the white line for motorists to abide by while driving).

3. *Plaintiff Biographies*, ACLU, *supra* note 1.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

laundering.⁸ At a loss for what to do, Morrow signed over the cash and property and was released after spending one night in the Shelby County Jail.⁹ Upon release, all charges against Morrow were dropped.¹⁰

While Morrow's story is shocking, this incident is in no way an isolated occurrence.¹¹ In another case out of Tenaha, Texas, Jennifer Boatright, her boyfriend, and her two children were driving through the town on their annual trip to Louisiana.¹² While preparing for the trip, the couple decided to bring along enough cash to purchase a used car at a dealership along the way.¹³ After trailing Boatright's car, an officer pulled her over and searched the car, finding \$6,037 in cash.¹⁴ Despite Boatright's logical explanation regarding the money's purpose and the fact that the officer did not even write her a ticket for the traffic violation, the officer arrested Boatright for money laundering.¹⁵ The officer then explained that she could either hand over the cash to Tenaha police or face money laundering charges and surrender her children to foster care.¹⁶ The officers then compelled Boatright to sign a form waiving her rights to the cash in exchange for letting her leave with her children.¹⁷ When asked later, the officer could not explain how the cash seized from Boatright's car was linked to any form of criminal activity.¹⁸

8. *Id.*

9. Drew, *supra* note 2 (noting that Morrow filed a civil action to get his money back, but after paying attorney's fees, was left with only a tenth of the amount originally confiscated).

10. *Plaintiff Biographies*, ACLU, *supra* note 1.

11. *Id.*; see Sarah Stillman, *Taken: Under Civil Forfeiture, Americans Who Haven't Been Charged with Wrongdoing Can Be Stripped of Their Cash, Cars, and Even Homes. Is That All We're Losing?*, NEW YORKER (Aug. 12, 2013), http://www.newyorker.com/reporting/2013/08/12/130812fa_fact_stillman; see also \$162,950 in Currency of the U.S. v. Texas, 911 S.W.2d 528, 530 (Tex. App.—Eastland 1995, writ denied) (upholding the trial court's decision that currency found in appellant's vehicle was subject to forfeiture due to its likely connection to a controlled substance-related felony even though the DPS trooper found neither drugs nor drug paraphernalia in the vehicle or on the appellant).

12. *Plaintiff Biographies*, ACLU, *supra* note 1; Stillman, *supra* note 11.

13. *Plaintiff Biographies*, ACLU, *supra* note 1; Stillman, *supra* note 11.

14. *Morrow v. Washington*, 277 F.R.D. 172, 180 (E.D. Tex. 2011) (noting that the officer pulled Boatright over for "driving in the left lane for over a half mile without passing and crossing over [the] white line" (quoting the offense report) (internal quotation marks omitted)); *Plaintiff Biographies*, ACLU, *supra* note 1; Stillman, *supra* note 11.

15. *Morrow*, 277 F.R.D. at 180.

16. *Plaintiff Biographies*, ACLU, *supra* note 1; Stillman, *supra* note 11; see TEX. PENAL CODE ANN. § 34.02(a) (West 2011):

- (a) A person commits money laundering if the person knowingly:
- (1) acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity;
 - (2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity;
 - (3) invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity; or
 - (4) finances or invests or intends to finance or invest funds that the person believes are intended to further the commission of criminal activity.

Id.

17. Stillman, *supra* note 11.

18. *Morrow*, 277 F.R.D. at 180 (citing the officer's deposition).

In another case of civil forfeiture abuse, District Attorney Joe Frank Garza, for the 79th Judicial District of Texas (serving Jim Wells and Brooks Counties), was involved in a scandal in which authorities discovered that Garza distributed more than \$4.2 million, gained through civil forfeiture, to himself and several favored employees over a six-year period.¹⁹ In a recent interview, Garza defended his actions, blaming them on the confusion of the Texas forfeiture system.²⁰ During roughly the same time period that Garza was swindling forfeiture funds, authorities also discovered that Brooks County Sheriff Blade Lozano—one of the employees whose salary Garza’s scheme supplemented—grossly misused public funds gained through civil forfeiture.²¹ An auditor found that Lozano authorized more than \$500,000 in questionable purchases, including eighteen unaccounted-for vehicles.²² The County Commissioner at the time, County Judge Raul Ramirez, said that Sheriff Lozano never sought his approval for the expenditures and the county had no record of budgets Lozano submitted.²³ Other incidents reveal that some law enforcement agencies use their civil forfeiture funds for wasteful and extraneous purposes such as parties, expensive cars, and trips.²⁴ In addition, there was even a case in which a District Attorney used thousands of dollars in civil forfeiture proceeds to produce commercials for his re-election campaign.²⁵

19. Jan Reid, *Highway Robbery: One Man’s Painful Journey Through South Texas’ Addiction to Asset Forfeiture*, TEX. OBSERVER (May 16, 2008, 12:00 PM), www.texasobserver.org/2760-highway-robbery/. “In March 2008, Joe Garza, the District Attorney for Texas’ 79th District (which includes Jim Wells . . . County) was voted out of office, in large part because of a growing public scandal regarding his use of forfeiture funds.” *Forfeiture as Extortion in Jim Wells County, Texas*, INST. FOR JUST., <http://www.ij.org/forfeiture-as-extortion-in-jim-wells-county-texas-2> (last visited Apr. 12, 2014). Following his conviction for misapplication of fiduciary property, a first degree felony, Garza took a plea deal in which he was sentenced to ten years in prison (later reduced to ten years probation and six months in jail) and was required to surrender his law license. Mark Collette, *As New Questions Emerge, Former District Attorney Garza Speaks About Forfeiture Funds*, CALLER.COM (Jan. 22, 2012, 12:59 AM), <http://www.caller.com/news/2012/jan/22/as-new-questions-emerge-former-district-attorney/> [hereinafter Collette, *As New Questions Emerge*]. Garza was also required to pay \$2.16 million in restitution and a \$10,000 fine. *Id.*

20. Collette, *As New Questions Emerge*, *supra* note 19.

21. Mark Collette, *Former Brooks County Sheriff Under Investigation for Use of Seized Cash*, CALLER.COM (Jan. 22, 2012, 12:59 AM), <http://www.caller.com/news/2012/jan/22/former-brooks-county-sheriff-under-investigation/> [hereinafter Collette, *Sheriff Under Investigation*].

22. *Id.* Questionable credit card purchases totaled approximately \$88,000 and included numerous large purchases such as a \$4,000 purchase at a mail management company, a nearly \$3,000 purchase at Cavender’s Boot City, and several purchases for unrelated online services including Classmates Online. *Id.*

23. *Id.*

24. John Burnett, *Sheriff Under Scrutiny Over Drug Money Spending*, NPR (June 18, 2008, 12:49 PM), <http://www.npr.org/templates/story/story.php?storyId=91638378> (archiving forfeiture fund abuses such as “the D.A. in Kimble County who took his office to Hawaii for a “training seminar,”” and the Camden County Sheriff who used forfeiture funds for a “\$90,000 Dodge Viper for the sheriff’s DARE anti-drug program” and to “build a weekend home”); Craig Malisow, *Texan Challenges Civil Forfeiture Law*, HOUS. CHRON. (July 26, 2012), <http://www.houstonpress.com/content/printVersion/3039848/> (noting that a “Montgomery County DA’s office threw [an office party] at the county fair in East Texas in 2005 at which forfeiture funds covered the booze and a margarita maker”).

25. Malisow, *supra* note 24.

While each of these incidents is appalling, what is even more alarming is that this taking of personal property is perfectly legal under current forfeiture statutes in Texas.²⁶ The Texas Code of Criminal Procedure allows law enforcement to seize “contraband” without a warrant.²⁷ While the Texas Penal Code’s definition of “contraband” addresses property involved in criminal activity, Texas law enforcement agencies can employ forfeiture regardless of criminal conviction or even indictment.²⁸ Furthermore, the cases that arise as a result of the initial seizure of property are classified as civil cases within the Texas judicial system.²⁹

The City of Tenaha cases, and other cases across Texas, have transformed the State of Texas into the poster child for civil forfeiture injustice.³⁰ As a result, Texas has been hoisted to the forefront of negative media coverage regarding what has been referred to as “highway robbery.”³¹ Furthermore, after taking a closer look into Texas’s civil forfeiture laws, this negative reputation comes as no surprise.³²

The State of Texas recently received a grade of D–, the lowest grade awarded, in the Institute for Justice’s landmark study ranking states for their civil forfeiture laws.³³ The 2010 study based its rankings on law enforcement agencies’ level of aggressiveness when acting under a state’s civil forfeiture laws, the amount of protection the state offered property owners, and the state’s system of public accountability.³⁴ This study found that from 2001 to 2007, Texas received “more than \$225 million in civil forfeiture proceeds.”³⁵ In addition, Texas received an extra “\$200 million in equitable sharing with the federal government from 2000 to 2008,” a statistic that largely influenced Texas’s low ranking.³⁶ Most shockingly, the study also found that Texas law enforcement agencies are able to retain 90% of the property they seize for their

26. See TEX. CODE CRIM. PROC. art. 59.03 (West 2006 & Supp. 2013).

27. *Id.* art. 59.03(b).

28. STEFAN D. CASSELLA, ASSET FORFEITURE LAW IN THE UNITED STATES 14–15 (2d ed. 2013) [hereinafter CASSELLA, ASSET FORFEITURE]; see *Bennis v. Michigan*, 516 U.S. 442, 446–52 (1996).

29. CASSELLA, ASSET FORFEITURE, *supra* note 28; see *Bennis*, 516 U.S. at 446–52.

30. See *supra* notes 1–23 and accompanying text.

31. Megan McArdle, *How the Lone Star State Legalized Highway Robbery*, BLOOMBERG VIEW (Aug. 7, 2013, 10:57 AM), <http://www.bloomberg.com/news/2013-08-07/how-the-lone-star-state-legalized-highway-robbery.html>; Lisa Sandberg, *Property Seized by E. Texas Police Called “Highway Piracy”*, HOUS. CHRON. (Feb. 7, 2009), <http://www.chron.com/default/article/Property-seized-by-E-Texas-police-called-1732387.php>; Gary Tuchman & Katherine Wojtecki, *Texas Police Shake Down Drivers, Lawsuit Claims*, CNN (May 6, 2009, 9:00 AM), <http://www.cnn.com/2009/CRIME/05/05/texas.police.seizures/>; Howard Witt, *Highway Robbery? Texas Police Seize Black Motorists’ Cash, Cars*, CHI. TRIB. (Mar. 10, 2009), http://www.chicagotribune.com/news/nationworld/chi-texas-profiling_wittmar10,0,6051682.story.

32. See discussion *infra* Part III.

33. *Policing for Profit, Detail of the State Forfeiture Grades*, INST. FOR JUST., <http://www.ij.org/asset-forfeiture-report-grade-detail> (last visited Apr. 14, 2014) [hereinafter *State Forfeiture Grades*].

34. *Policing for Profit, Asset Forfeiture Report: Texas*, INST. FOR JUST., <http://www.ij.org/asset-forfeiture-report-texas> (last visited Apr. 12, 2014) [hereinafter *Asset Forfeiture Report: Texas*].

35. *Id.*

36. *Id.* Equitable sharing is a device allowing states to benefit from federal forfeiture proceeds through their involvement in investigatory or law enforcement functions. See *infra* Part II.D.

specific agency.³⁷ This results in a large incentive to seize property, given that the forfeiture will provide a direct benefit to the state's law enforcement agencies.³⁸

The goal of this Comment is to provide an overview of the major concerns surrounding civil forfeiture in Texas, including a look into why Texas is falling behind other states in the drive to improve civil forfeiture laws.³⁹ Laying the foundation for civil asset forfeiture in the United States, Part II discusses the types of asset forfeiture used today and introduces some of the incentives that foster its abuse amongst law enforcement.⁴⁰ Part II also explores the history of civil asset forfeiture in the United States, introduces the system of equitable sharing between state and federal agencies, and concludes by examining some of the benefits that can stem from civil asset forfeiture when used properly.⁴¹ Part III then provides the background for the reason that civil asset forfeiture abuse is so prevalent in Texas by discussing current statistics and relevant state statutes.⁴² Part IV provides a comparison of four states whose civil asset forfeiture laws are among those ranked best in the country for protecting property owners from law enforcement's forfeiture abuse.⁴³ Finally, Part V concludes the discussion, providing several recommendations for amending Texas civil asset forfeiture laws in order to harmonize the interests of innocent property owners with those of law enforcement under the civil forfeiture system.⁴⁴

While Texas's civil asset forfeiture system is this Comment's predominant topic, it is helpful to begin first with a discussion of asset forfeiture laws as a whole in the United States.⁴⁵ From its humble beginnings in maritime law to its subsequent rise in popularity as an effective drug crime fighting tool, asset forfeiture has a rich history in the United States.⁴⁶ Unfortunately, this rich history has set the stage for asset forfeiture's current widespread abuse.⁴⁷

II. BUILDING THE PRINCE'S TREASURY: ASSET FORFEITURE IN THE UNITED STATES

Asset forfeiture's use is continuing to grow in the United States at an astonishing level.⁴⁸ In 2008, the United States Department of Justice's Asset

37. *Asset Forfeiture Report: Texas*, *supra* note 34.

38. *Policing for Profit, Executive Summary*, INST. FOR JUST., <http://www.ij.org/executive-summary-2> (last visited Apr. 12, 2014) [hereinafter *Executive Summary*].

39. *See infra* Parts III–IV.

40. *See infra* Part II.A, C.

41. *See infra* Part II.B, D, E.

42. *See infra* Part III.A–B.

43. *See infra* Part IV.A–B.

44. *See infra* Part V.

45. *See infra* Part II.

46. *See infra* Part II.B.

47. *See infra* Parts II.B–D, III.A.

48. *See infra* text accompanying notes 49–53.

Forfeiture Fund held more than \$1 billion in assets (after deducting various expenses) for the first time in the Fund's history.⁴⁹ Continuing with this growth, in the 2012 fiscal year, deposits to the Fund exceeded \$4 billion.⁵⁰ This is in startling contrast to the \$93.7 million in deposits that the Fund held at its creation in 1986.⁵¹ Similarly, the United States Treasury Department's Treasury Forfeiture Fund saw growth as well.⁵² In the 2012 fiscal year, the Treasury Forfeiture Fund saw more than \$516.6 million in deposits and recoveries, with 76.38% of these deposits representing single cash forfeitures equal or greater to \$100,000.⁵³

From these statistics, it is clear that asset forfeiture is on the rise in the United States and does not show any signs of slowing down.⁵⁴ A brief background into the United States' asset forfeiture system, as well as some of the current techniques law enforcement uses, provide insight into this continued growth.⁵⁵

A. Types of Asset Forfeiture

In the United States today, asset forfeiture is split into three categories: (1) criminal asset forfeiture; (2) administrative asset forfeiture; and (3) civil asset forfeiture.⁵⁶ While a look into criminal and administrative asset forfeiture is helpful to fully understand asset forfeiture's broad scope, this Comment will predominantly address civil asset forfeiture, as it is currently the most abused—and, thus, condemned—type of asset forfeiture in Texas.⁵⁷

1. Criminal Asset Forfeiture

In the United States today, criminal asset forfeiture is considered a very powerful tool that law enforcement agencies use broadly to combat criminal activity.⁵⁸ With criminal asset forfeiture, the government's authority to seize property is first based upon a criminal conviction.⁵⁹ Moreover, criminal

49. *Executive Summary*, *supra* note 38.

50. U.S. DEP'T OF JUSTICE, REPORT TO CONGRESS: TOTAL NET DEPOSITS TO THE FUND BY STATE OF DEPOSIT AS OF SEPTEMBER 30, 2012 (2013), available at <http://www.justice.gov/jmd/afp/02fundreport/2012affr/report1.htm>.

51. *Executive Summary*, *supra* note 38.

52. U.S. DEP'T OF THE TREASURY, TREASURY FORFEITURE FUND ACCOUNTABILITY REPORT—FISCAL YEAR 2012 (2013), available at <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/FY%202012%20Annual%20Report.pdf>.

53. *Id.*

54. *See supra* text accompanying notes 33–38.

55. *See infra* Part II.A–D.

56. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 9.

57. *See infra* Parts III, IV.B.

58. *See Overview of the Asset Forfeiture Program*, U.S. DEPARTMENT OF JUST., <http://www.justice.gov/jmd/afp/> (last visited Apr. 12, 2014); *White Collar Crime: Asset Forfeiture*, FBI, http://www.fbi.gov/about-us/investigate/white_collar/asset-forfeiture (last visited Apr. 15, 2014).

59. *See CASSELLA*, ASSET FORFEITURE, *supra* note 28, at 11–12.

forfeiture is typically imposed upon a person as part of his sentence in a criminal case.⁶⁰ For instance, if a defendant is convicted of selling cocaine under a federal statute, the government will seize all of the drugs, as well as any assets the defendant used in furtherance of his cocaine sales.⁶¹ This could include vehicles, cash, or other personal property the defendant utilized.⁶² This type of seizure is known as criminal forfeiture.⁶³

Unlike the other types of forfeiture, criminal asset forfeiture is categorized as “an *in personam* action against the defendant, [in contrast to] an *in rem* action against the property involved in an offense.”⁶⁴ Therefore—when coupled with the criminal conviction requirement—criminal forfeitures carry with them the procedural and constitutional safeguards of any criminal action.⁶⁵ As this Comment will discuss further, these safeguards include a heightened burden of proof on the government before it subjects a defendant’s property to forfeiture, as well as providing the right to representation by counsel for the property-owner defendant.⁶⁶

2. Administrative Asset Forfeiture

In comparison to criminal forfeiture, both administrative and civil asset forfeitures are characterized as *in rem* actions and do not require that a property owner be found guilty of a criminal offense.⁶⁷ Under the administrative and civil forfeiture systems, however, the government may seize property without the owner ever being charged with a crime.⁶⁸

The difference between administrative asset forfeiture and civil asset forfeiture rests upon the need for judicial involvement.⁶⁹ As its name might suggest, a federal law enforcement agency can oversee administrative asset forfeiture without prosecutorial or judicial involvement.⁷⁰ Administrative forfeiture, however, only applies to uncontested cases in which the owner does not come forward to claim his seized property.⁷¹ Typically, the initial forfeiture in an administrative forfeiture proceeding occurs as the result of an investigation by a law enforcement agency such as the Drug Enforcement Agency (DEA) or the Bureau of Alcohol, Tobacco, Firearms, and Explosives

60. *Id.* at 562.

61. *See, e.g.*, *United States v. Lewis*, 987 F.2d 1349, 1350–52, 1357 (8th Cir. 1993).

62. *Id.* at 1350–52.

63. *See* CASSELLA, ASSET FORFEITURE, *supra* note 28, at 11.

64. *Id.* at 11–12.

65. *See id.*

66. *See id.*; *infra* Part II.C.

67. *See* CASSELLA, ASSET FORFEITURE, *supra* note 28, at 10–11, 14–16.

68. *Id.* at 14–15 (noting that “[b]ecause a civil forfeiture does not depend on a criminal conviction, the forfeiture action may be filed before indictment, after indictment, or if there is no indictment at all”); *see Bennis v. Michigan*, 516 U.S. 442, 446–52 (1996).

69. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 9–10.

70. *Overview of the Asset Forfeiture Program*, *supra* note 58.

71. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 10–11.

(ATF).⁷² After the property's seizure, the relevant agency gives notice to anyone with a potential interest in the property so that they may object.⁷³ As required by statute, agencies must send notice to potential claimants within sixty days of the seizure "in a manner to achieve proper notice as soon as practicable."⁷⁴ Usually notice is given in the form of mail to potential claimants; is published in the newspaper; and includes the identity of the property, the time and place the property was seized, and the procedures for objecting to the seizure.⁷⁵ Failure to object within a specified amount of time results in the agency entering a declaration of forfeiture and taking ownership of the property.⁷⁶ Although the proceeding takes place outside of the presence of the judicial system, this declaration is essentially equivalent to a judicial order and is, therefore, enforceable.⁷⁷ On the other hand, if the property owner does contest the seizure, the agency must turn the case over to the United States Attorney's office for a formal judicial action.⁷⁸ Failure to turn such a case over results in the agency being ordered to return the property to the owner.⁷⁹

Upon turning the case over, the government typically employs one of two methods.⁸⁰ First, the government can decide to file a civil complaint against the property, initiating civil judicial forfeiture as discussed below.⁸¹ Alternatively, the government can attach the forfeiture to an indictment proceeding in a criminal case, potentially commencing criminal forfeiture and conveniently decreasing the property owner's chances of recovery.⁸² Nonetheless, because most property seizure cases are uncontested, these methods are rarely necessary, and administrative forfeiture provides the basis of authority for the majority of forfeiture actions within the United States.⁸³

3. Civil Asset Forfeiture

While civil asset forfeiture is like administrative asset forfeiture in that they are both considered in rem actions against property regardless of an

72. *Id.*

73. *Id.* at 9–10; see 18 U.S.C. § 983(a)(1)–(3) (2012) (explaining the procedural statutes governing administrative asset forfeiture, referred to in the statute as "nonjudicial civil forfeiture").

74. 18 U.S.C. § 983(a)(1)(A)(i).

75. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 173–82; see 19 U.S.C. § 1607 (2012) (requiring notice to be sent through publication in a newspaper of general circulation).

76. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 10–11; see 18 U.S.C. § 983(a)(2)(B); 19 U.S.C. § 1609(a) (2012).

77. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 10–11; see 18 U.S.C. § 983(a)(2)(B); 19 U.S.C. § 1609(b).

78. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 10–11; see 18 U.S.C. § 983(a)(3); 19 U.S.C. § 1610 (2012).

79. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 10–11; see 18 U.S.C. § 983(a)(3).

80. See 18 U.S.C. § 983(a)(3)(B)–(C).

81. See *id.* § 983(a)(3)(B); see *infra* Part II.A.3.

82. See 18 U.S.C. § 983(a)(3)(C).

83. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 10–11 (noting that 80% of all DEA seizure cases go uncontested).

associated criminal conviction, civil asset forfeiture *is* required to take the form of a formal judicial proceeding.⁸⁴ In a civil forfeiture case, the federal or state government files an action pursuant to authority derived from state and federal forfeiture statutes directly against the property under the belief that the property either was derived from or was used to commit a crime.⁸⁵ The property owner can then defend his property in a court of law.⁸⁶ If the owner is successful, the property is returned to him, but if not, title to the property passes to the government.⁸⁷

Although civil asset forfeiture seems a logical and necessary form of state authority, room for abuse is high given the difficulty property owners encounter navigating the judicial process.⁸⁸ A brief look into civil asset forfeiture's history in the United States lays the foundation for its modern day applicability and provides a basis for understanding its long record of abuse.⁸⁹

B. History of Civil Asset Forfeiture in the United States

Personifying property through the notion that property can commit a transgression and subsequently be held responsible through confiscation is not a new concept.⁹⁰ Rather, there are remnants of civil forfeiture-based concepts dating all the way back to biblical times when people would give to God any item or animal used or acquired in furtherance of a wrongdoing.⁹¹ This concept continued through medieval Europe and English common law, eventually making its way to the United States through admiralty law.⁹² Through civil forfeiture, the United States routinely seized ships that violated the laws of the high seas for reasons such as customs violations and slave trafficking.⁹³ The Supreme Court held that to successfully enforce piracy, customs, and admiralty

84. *Overview of the Asset Forfeiture Program*, *supra* note 58; see 18 U.S.C. § 981(a)(2)(B)(3) (2012). Notably, the fact that civil asset forfeiture cases are in rem actions—in contrast to in personam actions—results in unique case names, such as “United States v. \$500,000.00 in U.S. Currency” or “State v. Silver Chevrolet Pickup VIN 1GCEC14T7YE257128 Tag No. 3TX16.” CASSELLA, ASSET FORFEITURE, *supra* note 28, at 15; see, e.g., *United States v. \$500,000.00 in U.S. Currency*, 591 F.3d 402, 402 (5th Cir. 2009); *State v. Silver Chevrolet Pickup*, 140 S.W.3d 691, 691 (Tex. 2004).

85. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 14–17.

86. *Id.*

87. *Id.*

88. *Executive Summary*, *supra* note 38.

89. See *infra* Part II.B.

90. See Mike Fishburn, *Gored by the Ox: A Discussion of the Federal and Texas Laws that Empower Civil-Asset Forfeiture*, 26 RUTGERS L. REC. 4 (“If an ox gore a man or a woman, that they die: then the ox shall be surely stoned, and his flesh shall not be eaten; but the owner of the ox shall be quit.” (quoting *Exodus* 21:28 (King James))) (internal quotation marks omitted).

91. See *id.*

92. Taline Festekjian, Note, *Civil Forfeiture and the Status of Innocent Owners After Bennis v. Michigan*, 37 B.C. L. REV. 713, 714–15 (1996). Early English common law developed a system known as “deodand,” under which the King forfeited any object that caused the death of an English citizen or was used in violation of the custom and revenue laws. See Higgins, *supra* note 2, at 776–77. The King would, in turn, use the forfeited money for religious or charitable purposes. See *id.*

93. See Higgins, *supra* note 2, at 776–77.

laws, civil forfeiture was a necessity.⁹⁴ If the vessel owner were overseas, the ability to confiscate the vessel provided a way to ensure that these laws were enforced in that “[t]he vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner.”⁹⁵ By filing an action against the property in rem, the government could take possession of the property without bringing an action against the property owner, who was oftentimes unknown, maximizing both convenience and necessity.⁹⁶

Although this concept of in rem forfeiture made its way onto land in the United States in the early twentieth century—applied to enforce taxation and prohibition—it was not until the “war on drugs” in the 1980s that modern civil forfeiture use became widespread.⁹⁷ During this time, Congress amended drug forfeiture statutes and civil forfeiture laws began to take their modern expansive form.⁹⁸ Through the 1978 and 1984 amendments to the Comprehensive Drug Abuse and Prevention Act of 1970, Congress allowed the forfeiture of “proceeds” from any drug offense and any property used to “facilitate” that offense.⁹⁹ This meant that forfeiture authority applied to any home or building where any kind of drug activity took place, any vehicle or instrument was used to transport drugs, or any other drug trafficking “instrumentality.”¹⁰⁰ In addition, the 1984 amendment also created the Assets Forfeiture Fund, into which the “Attorney General was to deposit all net forfeiture proceeds for use by the Department of Justice and other federal law enforcement agencies.”¹⁰¹

94. *The Malek Adhel*, 43 U.S. 210, 233 (1844).

95. *Id.*

96. CASSELLA, ASSET FORFEITURE, *supra* note 28, 29–30.

97. *Dobbins’s Distillery v. United States*, 96 U.S. 395, 404 (1877) (holding that an innocent property owner had to forfeit property he owned in a distillery because the owner’s lessee was keeping fraudulent books without his knowledge); *Forfeiture*, LEGAL INFO. INST. (July 5, 1999), <http://www.law.cornell.edu/background/forfeiture/> (last visited Apr. 15, 2014); *see* J.W. Goldsmith, Jr., *Grant Co. v. United States*, 254 U.S. 505, 508–09 (1921) (holding that the United States had the right to seize an automobile “used by three persons who were named, in the removal and for the deposit and concealment of 58 gallons of distilled spirits upon which a tax . . . had not been paid”).

98. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 29–30; *see* 21 U.S.C. §§ 881(a)(6) (1978), 881(a)(7) (1984).

99. *See* 21 U.S.C. § 881(a)(6) (1978) (authorizing forfeiture of the proceeds from drug-related offenses), (a)(7) (1984) (authorizing forfeiture of any property used “to commit, or to facilitate the commission of,” a drug offense); *United States v. Schifferli*, 895 F.2d 987, 990 (4th Cir. 1990) (expanding the definition of facilitating property to be any property that makes the offense easier to commit or harder to detect).

100. *United States v. 916 Douglas Ave., Elgin, Ill.*, 903 F.2d 490, 494 (7th Cir. 1990) (identifying a sufficient nexus between a defendant’s house and an illegal drug transaction to justify forfeiture when a defendant used his home telephone to negotiate price and quantity of cocaine to be sold); *United States v. One 1980 Bertram 58’ Motor Yacht*, 876 F.2d 884, 887–88 (11th Cir. 1989) (holding a yacht’s forfeiture proper when the yacht’s intended use was transporting drugs).

101. Scott Bullock, *Policing for Profit, Asset Forfeiture Report: Foreword*, INST. FOR JUST., <http://www.ij.org/foreword-2> (last visited Apr. 12, 2014); *see* Comprehensive Crime Control Act of 1984, Pub. L. No. 98-743, 98 Stat. 1976 (1983).

Civil forfeiture laws went through another great evolution in 2000, when Congress made substantial changes to the rules governing administrative and civil forfeitures with the Civil Asset Forfeiture Reform Act of 2000 (CAFRA).¹⁰² CAFRA's purpose is "[t]o provide a more just and uniform procedure for Federal civil forfeitures."¹⁰³ To do this, Congress imposes a "preponderance of the evidence" standard—the same standard applied to all other civil cases—upon the government to prove forfeiture.¹⁰⁴ This change in standard came about as a direct result of the House Committee of the Judiciary's recommendation that the previous probable cause standard was too low to reflect the high value placed on private property in our society today.¹⁰⁵ In addition, under CAFRA, Congress created the "Innocent Owner Defense" for property owners.¹⁰⁶ Under the defense, if a property owner can show, by a preponderance of evidence that he "did not know of the conduct giving rise to forfeiture" or that he reasonably tried to stop the unlawful conduct when he learned of it, then he can keep the property.¹⁰⁷ Also, CAFRA provides for the appointment of counsel for indigent property owners in a civil forfeiture action, but only if (1) the property owner is already "represented by counsel appointed . . . in connection with a related criminal case," or (2) if the "property subject to forfeiture is real property that is being used by the person as a primary residence."¹⁰⁸ Furthermore, CAFRA provided for several additional reforms including increasing the length of time in which the government must provide notice to the property owner and increasing the length of time in which the property owner may contest.¹⁰⁹

While CAFRA is a step in the right direction for civil asset forfeiture reform, there is also some belief that CAFRA is still not as comprehensive as it

102. Civil Asset Forfeiture Reform Act, Pub. L. No. 106-185, 114 Stat. 202 (2000); see Higgins, *supra* note 2, at 779–80.

103. Civil Asset Forfeiture Reform Act, 114 Stat. 202.

104. 18 U.S.C. § 983(c) (2012); see H.R. REP. NO. 106-192, at 12 (1999); David Pimentel, *Forfeitures Revisited: Bringing Principle to Practice in Federal Court*, 13 NEV. L.J. 1, 23–25 (2012). CAFRA shifts the burden of proof from the claimant to the government, which was the standard prior to the reform. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 453 (citing *United States v. \$129,727.00 U.S. Currency*, 129 F.3d 486, 292 (9th Cir. 1997) (providing that the burden was on the claimant instead of the government prior to CAFRA)).

105. 18 U.S.C. § 983(c); see H.R. REP. NO. 106-192, at 12; Pimentel, *supra* note 104, at 23–35. The House Committee proposed a higher clear and convincing evidence standard for civil forfeiture reform in CAFRA, but the United States Department of Justice struck this standard down. 146 CONG. REC. H2049 (daily ed. Apr. 11, 2000); see H.R. REP. NO. 106-192, at 33–34.

106. See Civil Asset Forfeiture Reform Act, 114 Stat. 202.

107. 18 U.S.C. § 983(d)(2)(A)(1).

108. *Id.* § 983(b)(1)(A), (b)(2)(A); see Pimentel, *supra* note 104, at 17.

109. 18 U.S.C. § 983(a)(1)(A)(i)–(D), (a)(2)(B); Pimentel, *supra* note 104, at 17–18. Prior to CAFRA, statutes provided claimants with an exceedingly short time to contest the forfeiture (usually this length of time was between ten and twenty days). Pimentel, *supra* note 104, at 17–18. Under CAFRA, a claimant now has thirty days to file a claim after notice that his property has been forfeited. 18 U.S.C. § 983(a)(4)(A). CAFRA also imposes a sixty-day limit in which the government must give potential claimants notice of seizure. *Id.* § 983(a)(1)(A)(i).

could be.¹¹⁰ Although it stands for a significant change in civil forfeiture laws, some commentators believe that the statute is largely a patchwork fix to a wide-ranging problem, leaving gaps in coverage and allowing for the possibility of injustice.¹¹¹ One scholar characterized the reform as a “series of practical ‘fixes’ of specific problems that have arisen that . . . reformers . . . wanted to fix and with which the other side could agree.”¹¹² One of the biggest critiques involves the fact that if a forfeiture goes uncontested, CAFRA still allows for the government to take ownership of the property without any type of judicial proceeding or evidentiary hearing through administrative forfeiture.¹¹³

In addition, while CAFRA has made great improvements to *federal* asset forfeiture, many states, including Texas, failed to follow the federal government’s lead by amending their own state civil forfeiture laws.¹¹⁴ This failure to reform in the midst of civil forfeiture’s growing use is one of the key reasons why civil forfeiture has been so widely abused by Texas law enforcement agencies.¹¹⁵ By tracing the factors that incentivize law enforcement to use civil forfeiture in the first place, however, we can shed some light onto what motivates civil forfeiture misuse and better understand the best approach for reform.¹¹⁶

C. Why Civil Forfeiture?

A closer look at the benefits forfeiture provides reveals that many of the positive benefits to society are actually a result of the use of *criminal* forfeiture actions.¹¹⁷ While it is true that civil and administrative forfeiture actions also frequently involve an underlying crime, there are several reasons that the government will choose to use civil forfeiture instead of criminal forfeiture.¹¹⁸ Many of these reasons, not surprisingly, are due to the fact that civil forfeiture provides additional benefits to the government in particular situations.¹¹⁹ Unfortunately, these benefits also foster abuse in the forfeiture system.¹²⁰

While administrative forfeiture is typically the first method the government attempts (due to the lack of judicial involvement and subsequent

110. See David B. Smith, *An Insider’s View of the Civil Asset Forfeiture Reform Act of 2000*, 24-JUN CHAMPION 28 (2000).

111. *Id.*

112. *Id.*

113. See 18 U.S.C. § 983(a)(2)(B); 19 U.S.C. § 1609(a) (2012).

114. See *infra* Part III.

115. See *infra* Parts III, IV.

116. See *infra* Parts IV.B, V.

117. See *infra* Part II.E.

118. See TEX. CODE CRIM. PROC. ANN. arts. 59.01–.06 (West 2006 & Supp. 2013); CASSELLA, ASSET FORFEITURE, *supra* note 28, at 17–22. Compare 18 U.S.C. § 983 (listing the guidelines for civil forfeiture proceedings), with 18 U.S.C. § 982 (2012) (discussing the rules for criminal forfeiture proceedings).

119. Stefan D. Cassella, *Forfeiture Is Reasonable, and It Works*, CRIM. L. & PROC. GROUP NEWSL., May 1997, at 2 [hereinafter Cassella, *Forfeiture Is Reasonable*].

120. See Pimentel, *supra* note 104, at 23–25.

ease of use), it prefers civil forfeiture to criminal forfeiture in several instances.¹²¹ The first, and possibly the most intuitive, reason the government would prefer civil forfeiture is because it does not require a conviction for a related crime, as is the case with criminal forfeiture.¹²² Therefore, if the defendant has passed away or is on the run, there can be no criminal forfeiture because there is no related prosecution.¹²³ Along the same lines, if the government can prove that the crime involved some property, but it is unsure about whom to charge or whether there is enough evidence to charge anyone at all, civil forfeiture may be a beneficial tool.¹²⁴ In addition, if the government is prosecuting a defendant in a particular state, but the forfeiture is federally driven, then civil forfeiture is the only viable procedure.¹²⁵

Another key reason the government prefers to use civil forfeiture compared to criminal forfeiture is due to the difference in the burden of proof required in each associated judicial proceeding.¹²⁶ In a criminal forfeiture proceeding, the government must prove its case “beyond a reasonable doubt,” while in a civil forfeiture proceeding, the government must only prove its case by a “preponderance of the evidence,” a significantly easier undertaking.¹²⁷ While beyond a reasonable doubt is often defined as “proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs,” the preponderance of the evidence burden requires much less.¹²⁸ With this lesser burden, the government must only show that “the fact sought to be proved is more probable than not.”¹²⁹ Furthermore, a preponderance of the evidence standard “does not require proof to an absolute certainty,” and the evidence must only be “more likely true than not.”¹³⁰ Thus, the government prefers this easier burden associated with civil forfeiture to the much more difficult beyond a reasonable doubt burden required in criminal forfeiture proceedings.¹³¹

121. See CASSELLA, ASSET FORFEITURE, *supra* note 28, at 17–22.

122. *Id.* at 11–14; *see supra* Part II.A.

123. See Cassella, *Forfeiture Is Reasonable*, *supra* note 119, at 2.

124. See CASSELLA, ASSET FORFEITURE, *supra* note 28, at 17–22.

125. See Cassella, *Forfeiture Is Reasonable*, *supra* note 119, at 2.

126. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 11–14; *see supra* Part III.

127. See CASSELLA, ASSET FORFEITURE, *supra* note 28, at 17–22 (noting that this lower burden of proof applies to both the government’s case in proving a crime was committed *and* in linking the property to the crime). In a criminal forfeiture action, the State must prove all elements of a crime beyond a reasonable doubt, convicting the defendant of a crime before the government considers the property for forfeiture. *Id.* at 14. Only upon a conviction does the court hear additional evidence and argument, applying a preponderance of the evidence standard to determine if a nexus between the crime and property existed so as to qualify for forfeiture. *Id.*; *see also* Sullivan v. Louisiana, 508 U.S. 275, 281–82 (1993) (holding that in a criminal case, a jury charge that improperly defines the State’s burden of proof as being less than beyond a reasonable doubt constitutes structural constitutional error that can never be harmless).

128. KEVIN F. O’MALLEY ET AL., FEDERAL JURY PRACTICE AND INSTRUCTIONS: CRIMINAL § 12:10 (6th ed. 2008).

129. *Id.* § 104:01.

130. *Id.*

131. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 14.

Moreover, law enforcement agencies have an incentive to use civil forfeiture over criminal forfeiture because it allows them to seize property owned by someone other than the criminal defendant.¹³² In this way, the government often employs civil forfeiture so it can seize property not owned by the criminal defendant, but instead simply *used* by the criminal defendant in furtherance of his crime.¹³³ An example of this would be when the government seizes a car, owned by a third party, that a criminal defendant frequently uses to transport illegal aliens across the border.¹³⁴ To seize the car, the government cannot attach it to the criminal trial proceeding in which a court determines a criminal defendant's guilt or innocence because the criminal himself does not own the property.¹³⁵ Instead, the government must bring a separate civil action.¹³⁶ In these instances, engaging in a civil proceeding through civil forfeiture—and thus bringing suit against the property itself—is the only way to seize the property used in furtherance of the criminal activity.¹³⁷

Finally, the government prefers civil forfeiture to criminal forfeiture because it does not limit the property forfeited as a result of the former proceeding to a particular transaction.¹³⁸ In contrast, criminal forfeiture does limit property forfeited as a result of a criminal forfeiture proceeding to the single transaction at issue in the criminal case for which the defendant's guilt or innocence is in question.¹³⁹ For example, in a criminal forfeiture proceeding, the government can only acquire a drug dealer's proceeds from the single drug transaction at issue.¹⁴⁰ Therefore, if the drug dealer has been involved in many drug-related transactions, the government can only acquire the property involved in each single transaction.¹⁴¹ In this scenario, the government may lose out on seizing additional property associated with past transactions that are hard to prove or transactions relating to crimes for which the defendant has not been charged.¹⁴² In contrast, in a civil forfeiture proceeding, the government can seize the proceeds from the drug dealer's entire career.¹⁴³ Compiling property in this way makes it very easy for the government to acquire a large

132. *Id.*

133. See Cassella, *Forfeiture Is Reasonable*, *supra* note 119, at 2.

134. *Id.*

135. See *id.* Compare 18 U.S.C. § 982 (2012) (prohibiting the government from seizing property belonging to someone other than the defendant), with 18 U.S.C. § 983 (2012) (allowing the government to seize property owned by someone other than the criminal defendant).

136. See statutes cited *supra* note 135.

137. See *supra* text accompanying notes 132–36.

138. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 19.

139. 18 U.S.C. § 982 (specifying forfeiture of property “involved in such offense”).

140. *Id.*; 21 U.S.C. § 853 (2012); see CASSELLA, ASSET FORFEITURE, *supra* note 28, at 19.

141. 18 U.S.C. § 982; 21 U.S.C. § 853; see CASSELLA, ASSET FORFEITURE, *supra* note 28, at 19.

142. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 20.

143. 18 U.S.C. § 981 (2012); CASSELLA, ASSET FORFEITURE, *supra* note 28, at 19.

amount of property in a single judicial proceeding.¹⁴⁴ Thus, civil forfeiture is a very attractive tool to government agencies.¹⁴⁵

The fact that civil forfeiture allows the government to take custody of property that it normally could not seize under criminal forfeiture continues to fuel its use and abuse by law enforcement.¹⁴⁶ With carefully crafted amendments to state civil forfeiture laws aimed at decreasing the incentive behind civil forfeiture to law enforcement, however, the laws can drastically reduce this abuse.¹⁴⁷ Unfortunately, even with state laws that better protect property owners, a loophole exists through which state law enforcement agencies can continue to fuel civil forfeiture abuse by joining in the federal forfeiture system: equitable sharing.¹⁴⁸

D. Equitable Sharing as a Loophole to State Civil Asset Forfeiture

Another principle driving civil asset forfeiture's use is the idea of equitable sharing.¹⁴⁹ Equitable sharing allows state and local law enforcement and prosecutorial agencies to share in the proceeds federal agencies retain through forfeiture, including the United States Department of Justice.¹⁵⁰ According to an equitable sharing brochure the Department of Justice provided to local and state agencies, "[a]ny state or local law enforcement agency that directly participates in an investigation or prosecution that results in a federal forfeiture may request an equitable share of the net proceeds of the forfeiture."¹⁵¹ This direct participation can occur in two ways.¹⁵²

First, the state or local agency may participate in a joint investigation with a federal agency.¹⁵³ "Joint investigations are those in which federal agencies work with state or local law enforcement agencies or foreign countries to enforce federal criminal laws."¹⁵⁴ In the case of joint investigation, the state or local law enforcement agency receives an equitable sharing amount based on the "reasonable relationship to the agency's direct participation in the investigation or law enforcement effort resulting in the forfeiture."¹⁵⁵

144. CASSELLA, ASSET FORFEITURE, *supra* note 28, at 19.

145. *Id.*

146. *See supra* discussion accompanying notes 121–44.

147. *See infra* Part V.

148. *See infra* Part II.D.

149. *See* Dick M. Carpenter II et al., *Inequitable Justice: How Federal "Equitable Sharing" Encourages Local Police and Prosecutors to Evade State Civil Forfeiture Law for Financial Gain*, INST. FOR JUST. (Oct. 2011), available at <http://www.ij.org/inequitablejustice>.

150. *Equitable Sharing Program*, U.S. DEPARTMENT OF JUST., <http://www.justice.gov/criminal/afmls/equitable-sharing/> (last visited Apr. 15, 2014).

151. U.S. DEP'T OF JUSTICE, GUIDE TO EQUITABLE SHARING FOR STATE AND LOCAL LAW ENFORCEMENT AGENCIES 3 (Apr. 2009), available at <http://www.justice.gov/criminal/afmls/pubs/pdf/04-2009guideequit.pdf>.

152. *Id.* at 6.

153. *Id.* at 6, 12.

154. *Id.* at 6.

155. *Id.* at 12.

Second, equitable sharing can ensue as a result of a state or local seizure's federal adoption.¹⁵⁶ This "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."¹⁵⁷ With this second method, the state or local agency will receive a flat 20% of the net proceeds of the now-federal forfeiture.¹⁵⁸ Furthermore, "[m]any task forces involving federal, state, and local law enforcement agencies have pre-arranged . . . equitable sharing agreements" that indicate an amount of proceeds that will be returned to the state and local agencies for particular types of involvement.¹⁵⁹

While on the surface equitable sharing seems like an effective way to build a close working relationship between federal and state agencies while fighting crime on a more comprehensive scale, it also has the effect of incentivizing law enforcement to over-police in an effort to supplement their budgets.¹⁶⁰ Equitable sharing provides a way to get around state laws regarding forfeiture proceeds and, thus, is a scapegoat for states with stringent forfeiture laws.¹⁶¹ While some states have stringent rules regarding the amount of forfeiture proceeds each seizing state agency is allowed to retain, under federal law, federal law enforcement agencies may exclusively keep *all* of the property and proceeds they seize.¹⁶² This makes forfeiture fairly easy—and rewarding—for states because equitable sharing allows state agencies to share in these funds, sometimes retaining up to 80% of forfeiture proceeds.¹⁶³ In contrast, if the state agency alone seized these funds, that agency would lose some or all of the funds according to that state's statutes.¹⁶⁴ In a state that has stringent civil forfeiture laws, this might result in the state agency retaining none of the proceeds it seizes.¹⁶⁵ Hence, by allowing states to get around their own civil forfeiture laws, equitable sharing is an all-too-attractive alternative to state-driven civil forfeiture.¹⁶⁶

The growing trend toward equitable sharing provides an extra layer of concern regarding state civil forfeiture reform.¹⁶⁷ Texas, as one of the largest participants in equitable sharing with the federal government, received over

156. *Id.* at 6.

157. *Id.* (footnote omitted).

158. *Id.* at 12.

159. *Id.* at 13.

160. Carpenter et al., *supra* note 149.

161. *Id.* (noting that "[b]etween 2000 and 2008, equitable sharing payments from the United States Department of Justice to state and local law enforcement doubled from about \$200 million to \$400 million").

162. *See* 19 U.S.C. § 1616a(c)(1)(A) (2012); 21 U.S.C. § 881(e)(1)(A) (2012); *infra* Part IV. Prior to the Comprehensive Control Act of 1984, federal forfeiture proceeds were deposited into the United States General Revenue Fund, leaving Congress to decide their use. Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837 (1983).

163. Carpenter et al., *supra* note 149.

164. *See id.*

165. *See id.* at 4.

166. *See id.* at 1.

167. *See infra* Part III.A.

\$200 million in equitable sharing from 2001 to 2008.¹⁶⁸ Therefore, it is evident that to best protect property owners, civil forfeiture reform in Texas will need to include a statutory limit on equitable sharing.¹⁶⁹ With these proper statutory limits in place, civil forfeiture can be a beneficial tool to law enforcement, while still protecting property owners.¹⁷⁰ A look into some of civil asset forfeiture's benefits further emphasizes the need for a civil forfeiture system in Texas that is free from greed, abuse, and injustice.¹⁷¹

E. Benefits of Civil Asset Forfeiture

When used correctly, asset forfeiture can be a very valuable crime-fighting tool.¹⁷² Forfeiture not only provides punishment for those involved in criminal activity, but also acts as a deterrent to crime.¹⁷³ Even the forfeiture system's critics agree that civil forfeiture can effectively work to take the profit out of crime—making crime more difficult by taking away the instrumentalities that fuel it.¹⁷⁴ In some cases, forfeiture even allows law enforcement to return property to innocent victims of criminal activity.¹⁷⁵ For instance, in 2012, the United States Department of Justice's Criminal Division distributed \$65 million in forfeited funds to the roughly 128,000 victims of the Enron Corporation securities fraud scandal.¹⁷⁶ The victims received the funds—forfeited from numerous criminal and civil actions—pursuant to 18 U.S.C. § 3664.¹⁷⁷

Moreover, the disbursement of forfeited funds to victims can incentivize whistleblowing in situations in which third parties discover fraud or other illegal activity.¹⁷⁸ In one instance, the Securities and Exchange Commission

168. See *supra* text accompanying note 36.

169. See *infra* Part V.D.

170. See *infra* Part II.E.

171. See *infra* Part II.E.

172. See *infra* text accompanying notes 175–83. But see David Benjamin Ross, Note, *Civil Forfeiture: A Fiction That Offends Due Process*, 13 REGENT U. L. REV. 259, 267 (2000–2001). While the constitutional issues surrounding civil asset forfeiture are beyond this Comment's scope, notably, some scholars are of the opinion that civil asset forfeiture violates (1) Due Process under the Fifth and Fourteenth Amendments; (2) the Eighth Amendment's protection against excessive fines; (3) the Sixth Amendment's right to counsel; and (4) the right to travel under the Privileges and Immunities Clause. See Louis S. Rulli, *On the Road to Civil Gideon: Five Lessons from the Enactment of a Right to Counsel for Indigent Homeowners in Federal Civil Forfeiture Proceedings*, 19 J.L. & POL'Y 683, 683 (2011); Melissa A. Rolland, Comment, *Forfeiture Law, The Eighth Amendment's Excessive Fines Clause, and United States v. Bajakajian*, 74 NOTRE DAME L. REV. 1371, 1371 (1999); Ross, *supra*, at 267.

173. Cassella, *Forfeiture Is Reasonable*, *supra* note 119, at 2.

174. See *id.*

175. See generally *Victims*, U.S. DEPARTMENT OF JUST., <http://www.justice.gov/criminal/afmls/victims/> (last visited Apr. 15, 2014) (describing that VARP, a program intended to promote the returning of assets to victims of crime, is a top priority to the Department of Justice).

176. See Press Release, U.S. Dep't of Justice, Justice Department Returned \$1.5 Billion to Victims of Crime Since January 2012 (Apr. 26, 2013), available at <http://www.justice.gov/opa/pr/2013/April/13-crm-480.html>.

177. See *id.* Section 3664 is titled "Procedure for issuance and enforcement of order of restitution." 18 U.S.C. § 3664 (2012).

178. See Press Release, U.S. Sec. & Exch. Comm'n, SEC Rewards Three Whistleblowers Who Helped

(SEC) used its authority pursuant to Rule 21F-3(b) of the Securities Exchange Act of 1934 to provide each of the three whistleblowers to a wire fraud scheme an award over \$125,000.¹⁷⁹ Upon winning the enforcement action against the defendant, the SEC awarded 5% of the sanctions, the money collected in the related criminal action, and the property seized by the Department of Justice in related civil and administrative forfeiture actions to the three whistleblowers.¹⁸⁰ The idea behind this provision is that it will lead to an increase in whistleblower tips, and thus, a decrease in criminal activity.¹⁸¹

While civil forfeiture's benefits can be great to society as a whole, they are currently overshadowed by rampant over-policing and law enforcement abuse.¹⁸² To protect property owners in Texas and to allow civil forfeiture's benefits to act as an effective crime deterrent, civil forfeiture reform is now more important than ever.¹⁸³ This notion is only further highlighted by a discussion of current Texas civil forfeiture statistics, as well as an analysis of the current civil forfeiture laws in Texas that invite abuse.¹⁸⁴

III. TEXAS: HOW THE INFAMOUS OUTLAW HAS SET THE STAGE FOR CIVIL ASSET FORFEITURE ABUSE

A. Current Statistics

As a state, Texas takes in one of the highest totals of civil forfeiture proceeds in the country.¹⁸⁵ As previously mentioned, from 2001 to 2007, Texas retained more than \$225 million in civil forfeiture proceeds, and from 2000 to 2008, the state secured an additional \$200 million by these means.¹⁸⁶ In addition, between 2001 and 2007, Texas seized 10,532 vehicles.¹⁸⁷ Furthermore, the number of vehicles forfeited in Texas increased nearly threefold during this seven-year period.¹⁸⁸ This rapidly growing trend toward civil forfeiture use is further indicative of its increased abuse.¹⁸⁹

Stop Sham Hedge Fund (Aug. 30, 2013), available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539796657#.UnGNoZQVLUM>.

179. See *id.* Rule 21F-3(b) provides for an additional whistleblower award based on assets seized as a result of a related criminal action. 17 C.F.R. § 240.21F-3(b) (2011).

180. See Press Release, U.S. Sec. & Exch. Comm'n, *supra* note 178.

181. Allana M. Grinshteyn et al., *SEC Announces Additional Whistleblower Award Based on Assets Seized by Justice Department*, MARTINDALE.COM (Sept. 16, 2013), http://www.martindale.com/securities-law/article_Proskauer-Rose-LLP_1962852.htm.

182. See *supra* discussion accompanying notes 171–80.

183. See *supra* Part I.

184. See *infra* Part III.A–B.

185. See *Executive Summary*, *supra* note 38.

186. See *supra* text accompanying notes 38–39.

187. *Executive Summary*, *supra* note 38. In 2003 alone, Texas forfeited 1,575 vehicles, compared to the seven vehicles forfeited in Maine that year. *Id.*

188. See *id.*

189. See *id.*

In recent years, as a result of harder economic times, Texas law enforcement agencies' budgets have been more dependent than ever upon civil forfeiture proceeds.¹⁹⁰ As of 2007, the average Texas law enforcement agency took in 14% of its budget through civil forfeiture.¹⁹¹ A further look at the top ten largest forfeiture agencies reveals that these Texas agencies secured, on average, 37% of their budgets through civil forfeiture, with some agencies obtaining as much as 65% of their budgets through forfeiture.¹⁹² In fact, many Texas agencies have reported that they actually count on securing and retaining forfeiture funds when planning their budgets, shifting forfeiture from an ancillary bonus into a necessity.¹⁹³

Interestingly enough, it appears that the Texas agencies that rely the most upon civil forfeiture proceeds are not the larger big-city agencies that exhibit higher crime rates, but are instead the smaller and more rural departments.¹⁹⁴ On average, 18.3% of rural agencies' budgets come from civil forfeiture proceeds, as compared to the 14% percent statewide average.¹⁹⁵ Because there is some evidence that civil forfeiture victims in smaller towns are more likely to be out-of-town visitors, this information not only sheds light on possible law enforcement forfeiture tactics, but could also set the stage for constitutional issues surrounding the right to travel.¹⁹⁶

These shocking statistics indicate not only that law enforcement agencies have come to rely on these funds as part of their budgets, but also that civil asset forfeiture in Texas has been on the rise over the past decade with no signs of slowing down.¹⁹⁷ As law enforcement agencies continue to rely more and more heavily on securing their funding through forfeiture, the incentive for abuse in the state grows exponentially.¹⁹⁸ A discussion of the Texas laws

190. See John Payne, *Fighting Crime or Fighting Budget Cuts?*, AMS. FOR FORFEITURE REFORM (July 27, 2011), <http://www.forfeiturereform.com/2011/07/27/fighting-crime-or-fighting-budget-cuts>.

191. *Policing for Profit, Data Reveals Texas Law Enforcement's Dependence on Forfeiture Funds*, INST. FOR JUST., <http://www.ij.org/data-reveals-texas-law-enforcement-acanacs-dependence-on-forfeiture-funds-2> (last visited Apr. 12, 2014) [hereinafter *Texas Law Enforcement's Dependence on Forfeiture Funds*]. Fourteen percent is equivalent to nearly \$140,000 of the average \$1 million budget in the State of Texas, enough to pay the salary for one law enforcement agency chief executive for one year. *Id.*

192. *Id.* The 76th District Attorney in Camp County was omitted from the top ten largest forfeiture agencies because its proceeds skewed the average. *Id.* Forfeiture proceeds represented 1,344% of the 76th District Attorney's Office in Camp County's budget in 2007, which is a marked increase in its budget. *Id.*

193. *Id.*; see James Wilson, *Asset Forfeiture: Are You Guilty Until Proved Innocent?*, DOWNSIZE DC (May 25, 2010), <http://www.downsizedc.org/blog/asset-forfeiture-are-you-guilty-until-proved-innocent>. "A survey of 770 law enforcement executives [across the country] found that nearly 40% viewed civil forfeiture as a necessary budget supplement." Wilson, *supra*.

194. *Texas Law Enforcement's Dependence on Forfeiture Funds*, *supra* note 191.

195. *Id.*

196. See *id.*; see generally U.S. CONST. amend. XIV, § 1, cl. 2 (providing that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," though the Fourteenth Amendment's relationship to civil forfeiture is outside of this Comment's scope); McArdle, *supra* note 31.

197. See *supra* text accompanying notes 185–95.

198. See *supra* text accompanying notes 185–95.

providing for civil forfeiture reveals that much of this abuse actually stems from the statutes themselves.¹⁹⁹

B. Current Forfeiture Laws in Texas

In Texas, there are numerous statutes codified in various codes that address forfeiture.²⁰⁰ The primary civil forfeiture statute in Texas, however, is located in Chapter 59 of the Texas Code of Criminal Procedure.²⁰¹ Under Texas law, any peace officer may seize property without a warrant if:

- (1) the owner . . . knowingly consents;
- (2) the seizure is incident to a search to which the owner . . . knowingly consents;
- (3) the property subject to seizure has been the subject of a prior judgment . . . ; or
- (4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.²⁰²

Within seventy-two hours of seizure, the peace officer must then “(1) place the property under seal; (2) remove the property to a place ordered by the court; or (3) require a [state] agency . . . to take custody of the property.”²⁰³ Upon seizure, the State must commence notice proceedings within thirty days by filing “notice of the seizure and intended forfeiture . . . with the clerk of the district court in the county in which the seizure is made,” as well as sending notice to the property’s owner.²⁰⁴ Furthermore, the seizing peace officer is supposed to “provide the attorney representing the state with a sworn statement that contains a schedule of the property seized, an acknowledgement that the officer has seized the property, and a list of the officer’s reasons for the seizure.”²⁰⁵

After seizure has taken place and notice of seizure has been provided, the State commences a civil forfeiture action in a state district court.²⁰⁶ Like federal forfeiture statutes, Texas statutes do not require a defendant to be the subject of prosecution or conviction for forfeiture to occur.²⁰⁷ In these civil forfeiture

199. See discussion *infra* Part III.B.

200. See TEX. ALCO. BEV. CODE ANN. § 103.14 (West 2007); TEX. CODE CRIM. PROC. ANN. art. 18.18 (West 2005 & Supp. 2013); TEX. NAT. RES. CODE ANN. § 161.312 (West 2011); TEX. HEALTH & SAFETY CODE ANN. § 481.153 (West 2010); TEX. TAX CODE ANN. § 171.251 (West 2008).

201. CRIM. PROC. arts. 59.01–.14 (West 2006 & Supp. 2013).

202. CRIM. PROC. art. 59.03(b) (West 2006 & Supp. 2013).

203. *Id.* art. 59.03(c).

204. CRIM. PROC. art. 59.04 (West 2006 & Supp. 2013).

205. CRIM. PROC. art. 59.03(c).

206. See *supra* Part II.A.3.

207. 18 U.S.C. § 983(d) (2012); CRIM. PROC. art. 59.05(d) (West 2006). “Overall . . . Texas [forfeiture] case law . . . tends to mirror many of the decisions made by the U.S. Supreme Court.” Fishburn, *supra* note 90, at 10.

actions, the State must only prove its case by a preponderance of the evidence.²⁰⁸ It is here, in the civil forfeiture proceeding—like CAFRA—that Texas statutes provide for an “innocent owner defense.”²⁰⁹ Unfortunately, case law has narrowed this defense considerably.²¹⁰

A prominent and highly discussed example in which the innocent owner defense has been narrowed occurred in the area of family law.²¹¹ In Texas, courts have held that community property is not necessarily exempt from forfeiture when a spouse uses that property in an illegal manner, regardless of whether the other spouse had knowledge of, or consented to, the spouse’s actions.²¹² In *Amrani-Khaldi v. State*, a wife attempted to save her and her husband’s 1974 Plymouth automobile from forfeiture after her husband used it to transport a controlled substance—even though the wife had no knowledge of the husband’s illegal actions.²¹³ Courts in Texas have established that a defendant asserting the innocent owner defense must prove he “did not know or should not reasonably have known of the act . . . giving rise to the forfeiture or that it was likely to occur at or before the time of acquiring and perfecting the interest” in the property.²¹⁴

Returning to the civil forfeiture judicial proceeding, if the State proves its case for forfeiture by a preponderance of the evidence, the court will enter a forfeiture ruling in favor of the State.²¹⁵ It is what occurs after such a judgment that spurs the most civil forfeiture abuse in Texas, and therefore, has been the subject of much of the Texas civil forfeiture laws’ criticism.²¹⁶ Under Texas law, after forfeiture, “the state may transfer the property to law enforcement agencies to maintain, repair, use, and operate the property.”²¹⁷ This includes selling the property at a public auction or sheriff’s sale to retain proceeds from the property.²¹⁸ Furthermore, Texas law provides that any law enforcement agency receiving proceeds in this way must budget how the proceeds are to be used, submitting this budget “to the commissioners court or governing body of the municipality” for approval.²¹⁹ Texas law also provides that the proceeds may not go towards political campaigns, donations to entities, judiciary training expenses, travel expenses, alcoholic beverages, or for any other expenditure the commissioners court does not approve.²²⁰ Moreover, while Texas law also

208. CRIM. PROC. art. 59.05(b); *see supra* text accompanying notes 129–35.

209. 18 U.S.C. § 983(d); CRIM. PROC. art. 59.05(c); *see supra* text accompanying notes 107–08.

210. *See* CRIM. PROC. art. 59.02(c)(1) (West 2006 & Supp. 2013); Fishburn, *supra* note 90, at 10.

211. *See Amrani-Khaldi v. State*, 575 S.W.2d 667, 668–69 (Tex. Civ. App.—Corpus Christi 1978, no writ).

212. *See id.*

213. *Id.*

214. CRIM. PROC. art. 59.02(c)(1).

215. *See id.*

216. *See supra* text accompanying notes 19–25.

217. *See* CRIM. PROC. art. 59.06(b) (West 2006 & Supp. 2013).

218. *See id.* art. 59.06(a).

219. *See id.* art. 59.06(d).

220. *See id.* art. 59.06(d–1).

provides that law enforcement officers should not use these proceeds to increase their salaries directly, an exception provides that a municipality's governing body or the commissioners court may approve a salary increase.²²¹

Although Texas has an intricate civil forfeiture system, there are several key areas in need of reform to better protect property owners from injustice and prevent civil forfeiture abuse by law enforcement.²²² Notably, Texas needs greater public accountability and transparency, better record keeping, greater governmental oversight, a higher burden of proof to forfeit property, and greater protections for innocent property owners.²²³ A look into the laws of other states that have implemented these concepts, effectively removing civil forfeiture abuse from within their borders, provides a great model upon which Texas can base its own reform.²²⁴

IV. THE ELUSIVE PRINCE OF THIEVES: WHY TEXAS IS MISSING THE MARK COMPARED TO OTHER STATES IN THE PURSUIT OF CIVIL ASSET FORFEITURE REFORM

As the poster child for civil forfeiture injustice across the country, Texas undeniably needs some level of civil asset forfeiture reform.²²⁵ Understanding just what that level is, however, involves a careful balance.²²⁶ At the heart of any proposed reform, Texas needs to establish an equilibrium between fair laws that protect innocent property owners' interests on one hand and a system focused on fighting crime—especially crime involving drugs—on the other.²²⁷ In 2012, Texas police made 139,108 drug-related arrests.²²⁸ Specifically, 14,342 of these arrests involved the manufacture of illegal substances, while 124,766 arrests involved possession offenses.²²⁹ With the incredible number of arrests and the continuing rise in drug trafficking observed in the state in recent years, the need for a proper balance is more important than ever.²³⁰

Unfortunately, even if Texas legislators push for civil asset forfeiture reform, local law enforcement—a group that wields great power in Texas—could halt that reform.²³¹ This type of backlash occurred in Georgia when Representative Wendell Willard tried to pass a bill concerning civil asset

221. *See id.* art. 59.06(d-1)(7).

222. *See infra* Part V.

223. *See infra* Parts IV.A.1-4, V.

224. *See infra* Part IV.A.1-4.

225. *See supra* notes 1-38 and accompanying text.

226. *See* Ray Henry, *In Ga., A Push to Change Civil Forfeiture Laws*, ONLINEATHENS (June 15, 2013), <http://onlineathens.com/local-news/2013-06-15/ga-push-change-civil-forfeiture-laws>.

227. *See* Cassella, *Forfeiture Is Reasonable*, *supra* note 119, at 2; *supra* Part II.E.

228. TEX. DEP'T OF PUB. SAFETY, 2012 CRIME IN TEXAS 75 (2012), available at <http://www.dps.texas.gov/crimereports/12/citCh9.pdf>.

229. *See id.*

230. *See High Intensity Drug Trafficking Areas (HIDTAs)*, U.S. DRUG ENFORCEMENT ADMIN., <http://www.justice.gov/dea/ops/hidta.shtml> (last visited Apr. 15, 2014).

231. *See infra* notes 232-34.

forfeiture reform.²³² Driven by the fear of losing their cherished civil forfeiture proceeds, sheriffs in Georgia visited the state house, testified against the proposed bill, and met one-on-one with lawmakers, resulting in the bill's defeat.²³³ This makes it clear that any civil asset forfeiture reform in Texas must focus on law enforcement's main incentive to use forfeiture in the first place—funding.²³⁴ A look at what other states have done to reform their civil forfeiture laws provides insight into changes that Texas should make to reform the system and create a balance between property rights and fighting crime.²³⁵

A. Other States—Taking the Lead in Civil Asset Forfeiture Reform

Eight states currently bar law enforcement agencies from using state forfeiture proceeds that the agency seized.²³⁶ These states include Indiana, Maine, Maryland, Missouri, North Carolina, North Dakota, Ohio, and Vermont.²³⁷ In addition, Colorado and Wisconsin only allow a law enforcement agency to retain 50% of forfeiture proceeds it seizes.²³⁸ This is compared to the 90% of proceeds Texas agencies may keep.²³⁹

While Texas received the lowest ranking in the Institute for Justice's landmark civil forfeiture study, Maine, North Carolina, Vermont, and North Dakota received the highest grades.²⁴⁰ This analysis shows that while each of these states has taken a slightly different approach, they all have efficiently and successfully reformed their civil forfeiture laws, providing a more favorable climate for property owners.²⁴¹ Thus, these states provide a good basis for analyzing civil asset forfeiture reform and offer concrete examples for Texas to follow when reforming its own system of civil forfeiture.²⁴²

1. Maine—Comprehensive Public Accountability and Record Keeping

As far as state forfeiture laws go, Maine has been ranked one of the top states in the country.²⁴³ In addition to not allowing any forfeiture proceeds to

232. Henry, *supra* note 226.

233. *See id.*

234. *See generally* Karis Ann-Yu Chi, Comment, *Follow the Money: Getting to the Root of the Problem with Civil Asset Forfeiture in California*, 90 CALIF. L. REV. 1635, 1636 (2002) (discussing money as the motive for civil asset forfeiture abuse).

235. *See infra* Part IV.A.

236. Marian R. Williams, Jefferson E. Holcomb & Tomislav V. Kovandzi, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, INST. FOR JUST., <http://www.ij.org/part-i-policing-for-profit-2> (last visited Apr. 15, 2014) [hereinafter Williams et al., *Abuse of Civil Asset Forfeiture*].

237. *See id.*

238. *See id.*

239. *Id.* In total, eighteen states' laws allow them to keep less than 90% of forfeiture proceeds. *Id.*

240. *State Forfeiture Grades*, *supra* note 33. Maine received an A-, North Carolina a C+ (law grade of A-), North Dakota a B+, and Vermont a B. *Id.*

241. *See infra* Part IV.A.1-4.

242. *See infra* Part IV.A.1-4.

243. *State Forfeiture Grades*, *supra* note 33.

be distributed directly to law enforcement agencies, Maine boasts a rigid system of public accountability.²⁴⁴ Once property is determined fit for forfeiture, funds or proceeds from the sale of the property are *not* given directly to the seizing law enforcement agency.²⁴⁵ Instead, the proceeds are deposited into the state's general fund.²⁴⁶ The state then uses this general fund for state expenditures including education, health programs, and correctional facilities.²⁴⁷ Finally, any proceeds law enforcement agencies receive from the general fund are tacked with very specific instructions as to their possible uses.²⁴⁸ For instance, law enforcement agencies cannot use these funds to pay an official's salary, but the agency can use the funds to combat criminal activity.²⁴⁹ This serves to reduce the direct personal stake that law enforcement has in civil forfeiture, reducing forfeiture's attractiveness for abuse.²⁵⁰

In addition, Maine requires law enforcement agencies to keep very detailed records regarding forfeited property, including (1) the forfeited property's owner; (2) the authority under which the State held, received, or disposed of the property; (3) to whom the State delivered the property; (4) the date and manner of the property's destruction or disposition; and (5) the exact kinds, quantities, and forms of the property.²⁵¹ With Maine as their example, many states have also begun to require more accurate and detailed reporting regarding civil forfeiture that occurs within their borders.²⁵² The idea is that this procedural safeguard will increase accountability by law enforcement agencies partaking in civil forfeiture.²⁵³

244. See ME. REV. STAT. ANN. tit. 15, § 5825 (2014).

245. See *id.*

246. *Policing for Profit, Asset Forfeiture Report: Maine*, INST. FOR JUST., <http://www.ij.org/asset-forfeiture-report-maine> (last visited Apr. 15, 2014); see ME. STATE LEGISLATURE OFFICE OF FISCAL & PROGRAM REVIEW, STATE OF MAINE COMPENDIUM OF STATE FISCAL INFORMATION: THROUGH FISCAL YEAR ENDING JUNE 30, 2011 (Jan. 2012), available at http://maine.gov/legis/ofpr/compendium/previous_compendiums/2011COMPEND.pdf.

247. See STATE OF MAINE COMPENDIUM OF STATE FISCAL INFORMATION: THROUGH FISCAL YEAR ENDING JUNE 30, 2011, *supra* note 246. The Maine Department of Public Safety, which includes the state's law enforcement agencies, received a mere 1.03% of the general fund in 2012, amounting to \$31,170,631. *Id.*

248. See David F. Robinson, *Drug Money Helps Police—Seized Assets Help Some Agencies Make Ends Meet*, MORNING SENTINEL (Apr. 22, 2012), <http://www.onlinesentinel.com/news/drug-money-helps-police-2012-04-21.html?pagenum=full>.

249. See *id.*

250. See *id.*

251. ME. REV. STAT. ANN. tit. 15, § 5825 (2014).

252. OHIO REV. CODE ANN. § 2981.11 (West 2014) (requiring law enforcement to keep “detailed records as to the amount of property acquired by the agency and the date property was acquired; . . . [t]he manner in which it was disposed, the date of disposition, detailed financial records concerning any property sold, and the name of any person who received the property; . . . [and t]he general types of expenditures made with amounts that are gained from the sale of the property and that are retained by the agency, including the specific amount expended on each general type of expenditure”); UTAH CODE ANN. § 24-2-103 (West 2013) (requiring that the seizing law enforcement agency “maintain a record of the property that includes: (i) a detailed inventory of all property seized; (ii) the name of the person from whom it was seized; and (iii) the agency's case number”).

253. See *supra* notes 246–52 and accompanying text; *infra* notes 254–85 and accompanying text.

Finally, Maine, unlike the majority of states, requires the government to prove the property owner's guilt—rather than requiring the property owner to prove his innocence—when the property in question is real property.²⁵⁴ This not only shifts the burden to the government, but also makes it much more difficult for the event to result in forfeiture.²⁵⁵ Also, this shift in burden mimics the standard for criminal culpability—innocent until proven guilty.²⁵⁶

2. North Carolina—Civil Forfeiture Eliminated

Another state that is frequently cited as having some of the best civil forfeiture laws for property owners is North Carolina.²⁵⁷ This is because North Carolina has essentially done away with civil asset forfeiture altogether.²⁵⁸ While the state maintains a rigid criminal forfeiture system, North Carolina has statutes that require any seizure to occur alongside a conviction—in effect, barring the possibility of civil forfeiture completely.²⁵⁹ Furthermore, this ensures that any forfeiture only occurs after the State has proven its case beyond a reasonable doubt.²⁶⁰

North Carolina, however, has filled the void caused by a lack of revenue from civil forfeiture by extensively participating in equitable sharing initiatives with the federal government.²⁶¹ In fiscal year 2012, North Carolina took in \$15,563,496 through equitable sharing with the Department of Justice alone.²⁶² While Texas took in \$31,520,522 from the Department of Justice the same year, the difference in the two states' populations accounts for the sizeable disparity.²⁶³ Although Texas took in nearly double what North Carolina received through equitable sharing, Texas's population is roughly three times that of North Carolinas.²⁶⁴

254. See ME. REV. STAT. ANN. tit. 15, § 5825.

255. *State Forfeiture Grades*, *supra* note 33.

256. *Executive Summary*, *supra* note 38.

257. *Policing for Profit, Asset Forfeiture Report: North Carolina*, INST. FOR JUST., <http://www.ij.org/asset-forfeiture-report-north-carolina> (last visited Apr. 15, 2013).

258. See N.C. GEN. STAT. ANN. § 14-2.3 (West 2014); *Policing for Profit, Asset Forfeiture Report: North Carolina*, *supra* note 257.

259. N.C. GEN. STAT. ANN. § 14-90–94 (West 2013).

260. See generally *State v. Woods*, 554 S.E.2d 383, 386 (N.C. Ct. App. 2001) (noting the requirement that the State prove its case beyond a reasonable doubt in a criminal forfeiture proceeding).

261. See DEP'T OF JUSTICE, *EQUITABLE SHARING PAYMENTS OF CASH AND SALE PROCEEDS EXECUTED DURING FISCAL YEAR 2012, BY RECIPIENT AGENCY* (2012) [hereinafter *EQUITABLE SHARING PAYMENTS*], available at <http://www.justice.gov/jmd/afp/02fundreport/2012affr/report2b.htm> (last visited Jan. 16, 2014).

262. See *id.*

263. See *id.*

264. See U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES* 32 (2012), available at <http://www.census.gov/prod/2011pubs/12statab/pop.pdf> (stating Texas's population as 25,146,000).

3. North Dakota—Strong Protections for Innocent Owners

Although the government only needs to demonstrate that there is probable cause to bring a forfeiture action and establish by a preponderance of the evidence that the property is related to criminal activity in North Dakota, the state offers several protections to property owners that make its laws unique.²⁶⁵ First, under North Dakota law, real estate, including residences, is not subject to forfeiture if it is co-owned by someone who has not been convicted of the underlying crime.²⁶⁶ In addition, if property, either real or personal, is forfeited, North Dakota's statutes provide that any innocent owner "must either be reimbursed to the extent of the nonforfeitable property interest or to the extent of the amount raised by the sale of the item."²⁶⁷ Finally, none of the proceeds from civil forfeiture end up in the hands of law enforcement.²⁶⁸ Instead, the funds from forfeited property are deposited into the "appropriate state, county, or city general fund."²⁶⁹

Furthermore, compared to many other states, North Dakota receives a relatively low amount of funds through equitable sharing.²⁷⁰ From 2000 to 2008, North Dakota only received an average of \$40,192 per year from the federal government as part of its equitable sharing program.²⁷¹ While this amount increased to \$97,165 in 2012, it accounts for less than one third of 1% of what Texas took in through equitable sharing during the same year.²⁷²

4. Vermont—A Clear and Convincing Standard

First, like Maine, North Carolina, and North Dakota, Vermont does not allow law enforcement to retain any direct proceeds from civil forfeiture.²⁷³ In Vermont, civil forfeiture proceeds go directly into the state's general fund, much like in both Maine and North Dakota.²⁷⁴ In addition, the predominant reason for Vermont's high rank is the fact that Vermont requires the government to prove its case for civil forfeiture by a "clear and convincing evidence" standard as compared to the "preponderance of the evidence" standard that the majority of states, including Texas, requires.²⁷⁵ Thus, in

265. See N.D. CENT. CODE §§ 29-31.1-01 to 07 (2014).

266. N.D. CENT. CODE § 29-31.1-01(1)(b).

267. N.D. CENT. CODE § 29-31.1-07(3).

268. N.D. CENT. CODE § 29-31.1-06(2).

269. N.D. CENT. CODE § 29-31.1-06(2).

270. *Policing for Profit, Asset Forfeiture Report: North Dakota*, INST. FOR JUST., <http://www.ij.org/asset-forfeiture-report-north-dakota> (last visited Apr. 13, 2014).

271. *Id.*

272. EQUITABLE SHARING PAYMENTS, *supra* note 261.

273. *Policing for Profit, Asset Forfeiture Report: North Dakota*, *supra* note 270.

274. *State Revenues*, VT. TRANSPARENCY, http://www.vttransparency.org/index.cfm?section=all&pg=State_Revenues (last visited Apr. 15, 2014); see N.D. CENT. CODE § 29-31.1-06(2); *supra* note 254 and accompanying text.

275. VT. STAT. ANN. tit. 18, § 4244 (West 2014). Only twelve other states require this "clear and

Vermont, it is more difficult for the government to seize property from its owner.²⁷⁶

B. Texas—Room for Improvement

Civil forfeiture's infamous reputation in Texas is likely the result of four main flaws in the structure of Texas civil forfeiture statutes.²⁷⁷ First, Texas allows its law enforcement agencies to receive a direct benefit from the property they seize by selling it and using 90% of the profits to supplement their budgets.²⁷⁸ Texas civil forfeiture statutes allow law enforcement agencies to use the funds gained through property seizure for "equipment, including vehicles, computers, . . . firearms, body armor, furniture, software, and uniforms."²⁷⁹ Texas statutes also allow law enforcement agencies to use seized funds for office supplies, law enforcement conferences, and building renovations, further establishing a direct financial stake in law enforcement agencies' forfeiture endeavors.²⁸⁰ In the eighty-third legislative year, the Texas House of Representatives even attempted to amend Texas civil forfeiture laws to include a provision allowing law enforcement agencies to use seized funds to supplement their employees' salaries.²⁸¹ Furthermore, there is a direct lack of public accountability associated with the direct benefit law enforcement received through the proceeds.²⁸² While each law enforcement agency must submit its budget, detailing how it will use the civil forfeiture proceeds, the commissioners court or municipality is ultimately the only entity charged with approving these budgets.²⁸³ This fosters direct abuse by municipalities, as they are likely to approve a budget coming from a law enforcement agency within their city limits, regardless of what that budget entails.²⁸⁴ Moreover, the fact that the municipality can get around the general rule and approve a budget that includes a direct salary increase for members of law enforcement invites abuse.²⁸⁵ In Texas, there have been several schemes between municipalities

convincing" standard: California, Colorado, Connecticut, Florida, Minnesota, Nebraska, Nevada, New Mexico, Ohio, Utah, Vermont, and Wisconsin. Williams et al., *Abuse of Civil Asset Forfeiture*, *supra* note 236; *see supra* text accompanying notes 128–33.

276. *See* VT. STAT. ANN. tit. 18, § 4244.

277. State of Texas v. One 2004 Chevrolet Silverado: *Ending "Policing for Profit" in Texas*, INST. FOR JUST., <http://www.ij.org/state-of-texas-v-one-2004-chevrolet-silverado> (last visited Apr. 15, 2013).

278. TEX. CODE CRIM. PROC. ANN. art. 59.06(d-4) (West 2006 & Supp. 2013); State of Texas v. One 2004 Chevrolet Silverado: *Ending "Policing for Profit" in Texas*, *supra* note 277.

279. CRIM. PROC. art. 59.06(d-4).

280. *See id.*

281. Tex. H.B. 1849, 83d Leg., R.S. (2013). Notably, this proposed provision was never included in Texas Criminal Procedure Article 59.06(d-3) because Senate Bill 878, amending Article 59.06, was considered in lieu of House Bill 1949 and did not include law enforcement salaries as an allowable use of seized funds. Tex. S.B. 878, 83d Leg., R.S. (2013) (enacted).

282. *See supra* Part I.

283. *See supra* text accompanying note 221.

284. *See* Collette, *As New Questions Emerge*, *supra* note 19.

285. *See supra* text accompanying note 218.

acting in concert with their law enforcement agencies aimed at directly and outrageously supplementing local public officials' salaries.²⁸⁶ Thus, municipalities are often not far enough removed from the law enforcement agencies within their borders to make an objective decision regarding civil forfeiture proceeds' use.²⁸⁷

The second flaw encouraging Texas law enforcement agencies' civil forfeiture abuse is the "preponderance of the evidence" standard Texas uses to determine whether a property seizure is valid.²⁸⁸ This standard directly contrasts other states that require the same standard of proof for forfeiture as required in a criminal proceeding (i.e., beyond a reasonable doubt) in order to determine whether a specific piece of property would be subject to seizure in a civil forfeiture proceeding.²⁸⁹ In addition, this preponderance of the evidence standard requires Texas property owners who have had their property seized to prove that they are innocent instead of requiring the State to prove that they are guilty.²⁹⁰ Texas's standard also provides more protection for criminal property owners than for innocent property owners.²⁹¹ A person's property does not have an absolute right to legal representation like an individual is entitled to in a criminal case.²⁹² This places an extreme burden on Texas property owners, especially because, in many instances, the cost of hiring a lawyer to prove their innocence and reclaim their property is more than the property is worth in the first place.²⁹³

The third flaw in Texas civil forfeiture laws is that there is inadequate protection for innocent property owners.²⁹⁴ While the affirmative innocent-owner defense is provided for by statute, the courts have interpreted this defense to be very narrow.²⁹⁵ The fact that this defense does not protect

286. See Collette, *As New Questions Emerge*, *supra* note 19; *supra* text accompanying notes 19–25.

287. See *supra* text accompanying notes 19–25.

288. TEX. CODE CRIM. PROC. ANN. art. 59.05(b) (West 2006); State of Texas v. One 2004 Chevrolet Silverado: *Ending "Policing for Profit" in Texas*, *supra* note 277.

289. *Policing for Profit, Asset Forfeiture Report: Nebraska*, INST. FOR JUST., <http://www.ij.org/asset-forfeiture-report-nebraska> (last visited Apr. 13, 2014); *Policing for Profit, Asset Forfeiture Report: Wisconsin*, INST. FOR JUST., <http://www.ij.org/asset-forfeiture-report-wisconsin> (last visited Apr. 13, 2014). Compare NEB. REV. ST. § 28-431 (2014) (discussing the beyond a reasonable doubt standard used in Nebraska), and TEX. CODE CRIM. PROC. ANN. art. 38.03 (West 2013) (discussing the beyond a reasonable doubt standard used in Texas criminal proceedings), with CRIM. PROC. art. 59.05(b) (discussing the preponderance of the evidence standard used in Texas forfeiture hearings).

290. See CRIM. PROC. art. 59.05(b); *El-Ali v. Texas*, 388 S.W.3d 890, 893 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) (putting forth a counterclaim against the State's forfeiture action).

291. See Chip Mellor, *Civil Forfeiture Laws and the Continued Assault on Private Property*, FORBES (June 8, 2011, 5:30 PM), <http://www.forbes.com/2011/06/08/property-civil-forfeiture.html>.

292. See 18 U.S.C. § 983(b) (2012) (establishing that persons contesting the forfeiture of property are only subject to the appointment of legal representation in certain situations authorized by the presiding court). Compare U.S. CONST. amend. VI. (stating an individual's right to counsel in criminal cases), with *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564 (9th Cir. 1995) (holding that there was no right to counsel in the defendant's civil forfeiture proceeding).

293. Stillman, *supra* note 11.

294. See *supra* text accompanying notes 213–16.

295. See *supra* notes 213–16 and accompanying text.

spouses from forfeiture of property they co-own with their defendant-spouses is in direct contrast to other states, including North Dakota.²⁹⁶ As discussed, North Dakota law provides for broad innocent-owner protection, which includes co-owned property owners' spouses.²⁹⁷

Finally, the fourth major flaw surrounding Texas civil forfeiture law that opens the door to abuse is the fact that the state legislature puts no limit whatsoever on law enforcement's ability to participate in equitable sharing with the federal government.²⁹⁸ As one of the largest participants in equitable sharing in the country, Texas receives a substantial amount of civil forfeiture proceeds through this method.²⁹⁹ If civil asset forfeiture reform is going to effectively protect property owners and prevent civil forfeiture injustice, the equitable sharing loophole has to be closed or at least significantly reduced.³⁰⁰

These four flaws in civil asset forfeiture law in Texas invite and even encourage civil forfeiture abuse by the state and law enforcement agencies.³⁰¹ Thus, the need for reform of this system is evident. With the following suggested amendments, however, the Texas legislature can effectively protect property owners and prevent civil forfeiture misuse by law enforcement.³⁰²

V. BULLSEYE: HOW THE TEXAS LEGISLATURE CAN HIT THE TARGET WITH CIVIL FORFEITURE REFORM

While it would please many of asset forfeiture's greatest critics, following in North Carolina's footsteps by doing away with civil asset forfeiture altogether would likely do more harm than good.³⁰³ Civil forfeiture in Texas is a widely used tool that produces benefits for our society—specifically, in the war against drugs.³⁰⁴ The ability to seize property that continues to directly fuel crime—even if the property's owner is dead or on the run—is one of civil asset forfeiture's key advantages that does not exist with criminal forfeiture.³⁰⁵

Texas, however, is still in need of a major reform of its civil forfeiture statutes if the state is going to save itself from further criticism.³⁰⁶ This road toward reform looked promising in March 2013 when Representative Naomi Gonzalez introduced legislation that would have forced law enforcement agencies to keep highly detailed records regarding their property seizures and expenditures, much like in Maine.³⁰⁷ Unfortunately, however, the bill later

296. See *supra* Part IV.A.3.

297. See *supra* Part IV.A.3.

298. See TEX. CODE CRIM. PROC. ANN. arts. 59.01–.14 (West 2006 & Supp. 2013).

299. See *supra* Part II.D and note 36 and accompanying text.

300. See *supra* Part II.D.

301. See *supra* Part IV.B.

302. See *infra* Part V.

303. *Policing for Profit, Asset Forfeiture Report: North Carolina*, *supra* note 257.

304. See *supra* Part II.E.

305. See *supra* Part II.C.

306. See *supra* Part I; McArdle, *supra* note 31.

307. Henry, *supra* note 226.

failed.³⁰⁸ Although Representative Gonzalez's attempt at reform was met with hostility, it is imperative that state legislatures continue to push toward reform.³⁰⁹

A. Greater Public Accountability, Record Keeping, and Government Oversight

When looking to reform, Texas first needs to push for greater public accountability and transparency, more uniformity in record keeping requirements, and stronger government oversight as Representative Gonzalez aimed to do.³¹⁰ Following the lead of the eight states that currently ban the use of civil forfeiture proceeds by the seizing law enforcement agency, Texas might strongly consider this measure to completely do away with any incentive that law enforcement agencies have to over-police and misuse civil forfeiture.³¹¹ In this way, any property or proceeds gained through civil forfeiture would not be directly available to the seizing law enforcement agency, but would instead go to a state general fund to be used for state expenditures such as education or health programs.³¹²

Alternatively, instead of banning or limiting the amount of civil forfeiture proceeds a seizing law enforcement agency can use, greater government oversight and public accountability may eliminate the incentive to abuse civil forfeiture. While Texas currently has a statutorily defined procedure for keeping track of seizures and the way in which law enforcement spends proceeds from forfeitures, it is a source of corruption due to the lack of statewide oversight.³¹³ Instead of being overseen by commissioners courts and local municipalities, these records need to be managed and supervised by an objective statewide agency that has little stake in its decision.³¹⁴ This would cut down on the potential for corruption that exists under the current system in which a municipality is able to approve its closely connected municipal law enforcement agencies' spending of forfeiture proceeds.³¹⁵ Finally, because reporting property seizures and submitting budgets for the forfeiture proceeds' use is so important to tracking how the reformed laws affect the civil forfeiture system, Texas should assess fines to each law enforcement agency that fails to meet the statutorily imposed reporting requirements. This way, instead of having an incentive to actively police for profit, law enforcement agencies have a direct incentive to comply with statutory requirements.

308. *Id.*

309. *Id.*

310. *See supra* text accompanying notes 301–03.

311. *See supra* text accompanying notes 232–34; *supra* Part II.C.

312. *See supra* Part IV.A.1.

313. *See* TEX. CODE CRIM. PROC. ANN. art. 59.03(c) (West 2006 & Supp. 2013); *supra* text accompanying notes 19–25.

314. *See supra* discussion accompanying notes 278–82.

315. *See supra* discussion accompanying notes 278–82.

Another possible solution to increase public accountability surrounding civil forfeiture in Texas comes from a proposed, but not passed, bill in Tennessee, recommending a requirement of an *ex parte* determination of probable cause before any forfeiture can take place.³¹⁶ Under this requirement, when a law enforcement officer wants to seize any kind of property, he would first have to go to a judge to get a second opinion on whether probable cause exists to support the officer's determination that the property is the proceeds of, or was used to commit an illegal act.³¹⁷ Only then, with the judge's approval, could the officer obtain a seizure warrant to acquire the property.³¹⁸ Furthermore, under this proposed requirement, property owners would still have the ability to later defend their claims to the property in court.³¹⁹

B. Heightened Burden of Proof

Next, to better protect property owners, the Texas Legislature should statutorily increase the burden of proof required for the State to retain forfeited property.³²⁰ Instead of the current preponderance of the evidence standard, Texas should follow Vermont's lead by implementing a clear and convincing standard of proof, or better yet, the beyond a reasonable doubt standard required in a criminal forfeiture proceeding.³²¹ Furthermore, the Texas Legislature should amend the law to require that the government prove guilt in a civil forfeiture proceeding instead of a property owner having to prove his innocence and non-involvement in the alleged criminal conduct.³²² This, in combination with a heightened burden of proof on the State, would mimic the standard for criminal culpability and echo the great importance Texas places on property rights.³²³

Along these same lines, to fully protect property owners and cut down on the risk of unconstitutional takings, Texas should amend its laws to allow for the appointment of counsel, much like in criminal cases, for forfeitures exceeding a certain monetary amount.³²⁴ Thus, if the seized property's value is more than this statutorily set limit, the property owner would have the right to appointed representation.³²⁵ Not only would this allow property owners to fight for their property without having to consider its value in light of the rising costs

316. See Eapen Thampy, *Tennessee Lawmakers Gut Forfeiture Reform Proposal, Push for Ex Parte Determinations of Probable Cause*, AMS. FOR FORFEITURE REFORM (Apr. 8, 2013), <http://www.forfeiture-reform.com/2013/04/08/tennessee-lawmakers-gut-forfeiture-reform-proposal-push-for-ex-parte-determinations-of-probable-cause/>.

317. See *id.*

318. See *id.*

319. See *id.*

320. See *supra* discussion accompanying notes 283–88.

321. See *supra* Part IV.A.4.

322. See *supra* discussion accompanying notes 283–88.

323. See *supra* text accompanying notes 126–29.

324. See *supra* notes 64, 107.

325. See *supra* notes 64, 107.

of hiring an attorney, it would also introduce a level of formality to the civil forfeiture system that is necessary when a citizen's property is at stake.

C. Greater Protections for Innocent Property Owners

Moreover, like North Dakota, the Texas Legislature should provide greater protections for innocent property owners by further defining the affirmative innocent-owner defense in the face of narrow interpretations by Texas courts.³²⁶ Instead of allowing the courts to further narrow the defense, the legislature should statutorily provide greater protections for co-owners not involved in the alleged criminal conduct giving rise to the forfeiture.³²⁷ In addition, much like North Dakota, Texas state law should include a provision requiring that any innocent owner either be reimbursed according to his nonforfeitable property interest or to the extent of the amount raised by the item's sale.³²⁸

D. Limits on Equitable Sharing

Finally, the Texas Legislature should place a statutory limit on the amount that state and local law enforcement agencies are able to receive through equitable sharing with the federal government.³²⁹ Without this additional statutory limit on equitable sharing, amending state civil forfeiture laws is virtually a pointless venture.³³⁰ By making state civil forfeiture laws more stringent, the risk of law enforcement agencies turning to equitable forfeiture to supplement their budgets is high.³³¹ Thus, a comprehensive system of reform cannot exist without also providing for a limit on equitable sharing.³³² To do this, the Texas Legislature could set an upper-limit amount that each law enforcement agency is allowed to receive through equitable sharing each year. With this limit, law enforcement agencies could more effectively predict their budgets, while avoiding the incentive to abuse civil forfeiture.

By following the lead of other states that have undergone civil asset forfeiture law reform, Texas can remedy a history of civil forfeiture abuse and bypass further negative attention and criticism.³³³ While civil forfeiture reform has a long way to go in Texas, with these amendments to Texas law, the Texas Legislature has the potential to establish an equilibrium between fair laws that protect innocent property owners' interests on one hand and a system focused on fighting crime on the other.

326. See *supra* Part IV.A.3; *supra* text accompanying notes 208–11, 289–92.

327. See *supra* text accompanying notes 208–11, 289–92.

328. See *supra* text accompanying note 263; *supra* Part IV.A.3.

329. See *supra* text accompanying notes 293–95.

330. See *supra* Part II.D.

331. See *supra* text accompanying notes 266–67.

332. See *supra* Part II.D.

333. See *supra* Part IV.A.

VI. CONCLUSION: ENSURING PROTECTION FOR THE TEXAS YEOMAN

Thomas Jefferson said “a right to property is founded in our natural wants, in the means with which we are endowed to satisfy these wants, and the right to what we acquire by those means.”³³⁴ Today, the right to property ownership is central to living the American dream. James Morrow and Jennifer Boatright, however, are examples of how this dream can quickly turn into a nightmare at the hands of those trusted most to protect it.³³⁵

While civil asset forfeiture has proven beneficial in deterring crime, it is its misuse and over-policing at the hands of Texas law enforcement that has framed Texas as the poster child for civil forfeiture injustice.³³⁶ Unfortunately, if Texas does not amend its laws to de-incentivize civil forfeiture abuse, this negative reputation will continue and property owners will continue to lack the protection they deserve.

As many states have harnessed the benefits of civil asset forfeiture by reforming their laws to better protect property owners, Texas has fallen behind, instead inviting civil forfeiture abuse by law enforcement.³³⁷ By failing to institute a proper system of public accountability and oversight and by failing to heighten the burden placed on the State for forfeiture, the Texas Legislature has, in effect, legalized highway robbery.

In its push toward civil asset forfeiture reform, the Texas Legislature needs to amend Texas laws to include greater public accountability and transparency, better record keeping, increased governmental oversight, a higher burden of proof to claim forfeited property, and greater protections for innocent property owners.³³⁸ The examples set by other states such as Maine, North Carolina, North Dakota, and Vermont provide effective examples for Texas to follow when amending Texas civil forfeiture laws.³³⁹ By remedying this evil, the Texas Legislature can effectively reduce the incentive behind policing for profit, and in turn, can protect Texas property owners like Morrow and Boatright.³⁴⁰

334. THOMAS JEFFERSON, THE WRITINGS OF THOMAS JEFFERSON, VOL. 10, 1816–1826 (Paul L. Ford ed., 1899).

335. See *supra* text accompanying notes 1–18.

336. See *supra* Part I.

337. See *supra* Part III.

338. See *supra* Part IV.B.

339. See *supra* Part IV.A.

340. See *supra* Part I.