

By the Numbers:

What Does the Department of Justice's New Forfeiture Policy Really Mean?

On January 16, U.S. Attorney General Eric Holder issued an order curtailing some Department of Justice forfeiture practices. The order suspended most “adoptive” forfeitures, where property seized by state and local law enforcement is turned over to (“adopted” by) the federal government for forfeiture. Under the DOJ’s equitable sharing program, the state or local agencies that seized the property can receive up to 80 percent of the proceeds, even if state law bars agencies from keeping forfeiture proceeds or limits how much they may keep. But adoption is only part of the equitable sharing program. The new policy exempts equitable sharing seizures made by state and local law enforcement working with federal agents on joint task forces or as part of joint investigations. It also does not address seizures by federal agents outside the equitable sharing program.

The Institute for Justice reviewed six years of DOJ forfeiture data, from 2008 through 2013, to estimate how much forfeiture activity could be affected by the new policy.

Most Equitable Sharing Seizures Continue

Only about a quarter—25.6 percent—of properties seized under equitable sharing were adoptions. The rest resulted from joint task forces or joint investigations exempt from the new rules. In terms of value, of the roughly \$6.8 billion in cash and property seized under equitable sharing from 2008 to 2013, adoptions accounted for just 8.7 percent.



Most DOJ Seizures Continue

Adoption for equitable sharing also made up a small share of overall DOJ seizures, about 10 percent. And as the DOJ acknowledged, adoptive seizures accounted for just three percent of the value of all seized properties in the DOJ system.



Forfeitures Without Convictions Continue

The new policy also does not address the lax legal standards in federal civil forfeiture law. Civil forfeiture allows law enforcement to take property without convicting or even charging the owner with a crime, and it sets a low evidentiary bar for forfeiture. Most properties in the DOJ system—78 percent—were seized for civil forfeiture. Only 22 percent were seized for criminal forfeiture, which requires a conviction. And the new policy does not change state forfeiture laws, most of which permit forfeitures without convictions or charges and allow law enforcement to keep some or all of the proceeds.

