

Forfeiture in the Shadows

An Investigation of Civil Asset Forfeiture in Cumberland County



December 2015



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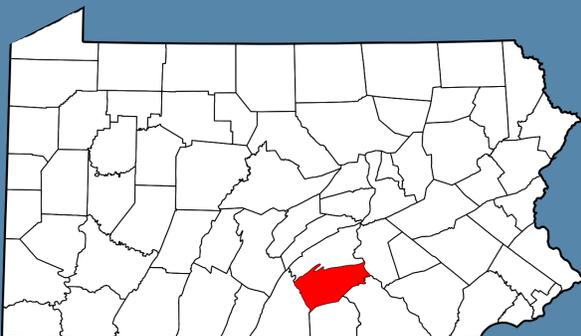
An Investigation of Civil Asset Forfeiture in Cumberland County



American Civil Liberties Union of Pennsylvania
www.aclupa.org

The cover photo depicts the Pennsylvania motto adorning the New Courthouse in Carlisle, Pennsylvania—the Cumberland County seat. *Source:* Doug Kerr — some rights reserved — <https://www.flickr.com/photos/dougtone/albums/72157626579408982/with/5656230824/> — cropped version.

Findings



This report is part of the ongoing investigation of civil forfeiture practices across the state by the American Civil Liberties Union of Pennsylvania (ACLU-PA). Civil forfeiture is a controversial legal process that permits law enforcement to seize and keep property that it claims was connected to a crime. Because the law is based on the legal fiction that the property itself is “guilty,” prosecutors can bring their cases directly against the property in civil court, instead of against the property owners in criminal court. This maneuver lets law enforcement get around the stronger constitutional protections that apply to criminal defendants and forfeit property without even *charging* property owners with crimes. State law then allows police and prosecutors to keep 100% of the revenue from these forfeitures for their own budgets, which gives law enforcement a powerful financial incentive to forfeit as much property as possible.

The ACLU-PA previously published reports exposing abusive civil asset forfeiture practices in Philadelphia County and Montgomery County. This investigation of Cumberland County builds on those findings, suggesting that procedural unfairness and racially disproportionate enforcement go hand-in-hand with Pennsylvania’s broken asset forfeiture laws. The following analysis is based on records acquired from the Office of the Cumberland County District Attorney (DA) compiling data from all civil forfeitures arising from property seizures between 2011 and 2013, as well as the in-person review of forfeiture-related court files.¹

The Office of the Cumberland County District Attorney ranks as one of the most aggressive forfeiters in the state, raking in average annual revenues in excess of \$400,000 in the last two reported years.² That amount equals 10% of the DA’s budget over that same span.³ The figure doesn’t include the value of the forfeited equipment that Cumberland County law enforcement kept for its own use, including 21 forfeited vehicles, six forfeited laptops, three forfeited iPads, and—unbelievably—*three forfeited gaming systems and four video games*.⁴ Even with this “in service” property excluded, Cumberland County’s forfeiture revenues put it among the top ten counties in both total and per capita forfeiture income.⁵

The Office of the Cumberland County District Attorney has generated the lion’s share of this forfeiture revenue without following the normal procedures for initiating a forfeiture case in court. Indeed, instead of filing a forfeiture petition, Cumberland County

FIGURE 1: The Cumberland County District Attorney makes huge profits from forfeiture

<i>County</i>	<i>Population*</i>	<i>Total Income Rank**</i>	<i>Per Capita Income Rank**</i>
Lebanon	133,568	12	1
Philadelphia	1,526,006	1	2
Lackawanna	214,437	7	3
Dauphin	268,100	8	4
Franklin	149,618	13	5
Cumberland	235,406	10	6
Lehigh	354,746	5	7
Lancaster	519,445	3	8
Montgomery	799,874	2	9
York	434,972	6	10

*Population from 2010 Census; **Ranks for FY2012-14



FIGURE 2 shows one type of property Cumberland County law enforcement has recently kept for its own use. Since state law only permits the government to retain property to aid drug enforcement, it's unclear what use would justify keeping a Playstation 3 (not to mention four video games and a gaming sensor bar).⁶

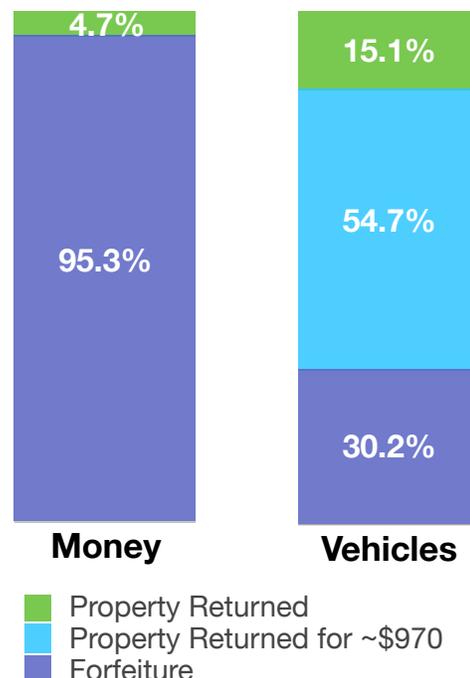
prosecutors routinely win forfeiture informally, without any court involvement, by getting property owners to sign “settlement” agreements.⁷ If a judge is brought into the forfeiture case at all, it is often only when an agreement can’t be reached or a judicial order is needed to transfer title of a vehicle or real estate from the property owner to the DA’s office.⁸

By relying on these settlements and bypassing the courtroom, the DA’s office annually transfers tens of thousands of dollars’ worth of property from private citizens directly into its own coffers *without any judicial oversight whatsoever*. And because civil forfeiture laws don’t provide property owners with appointed counsel or the right to recoup attorneys’ fees, people whose property the government is trying to forfeit often don’t have a lawyer.⁹ With no judge to oversee the case and no advocate to inform property owners of their rights and defenses, these settlement discussions are

not arms-length negotiations between equally informed parties.

At least 70% of forfeiture cases in Cumberland County are estimated to settle without court proceedings ever being initiated.¹⁰ In light of the lopsided negotiations behind many of these settlements, it is unsurprising that so few property owners whose property the government seizes for forfeiture succeed in getting their property back. Out of the money confiscated for forfeiture between 2011 and 2013, only 4.7% of it was returned, whether by settlement or judge’s order, where the forfeiture case reached a final outcome.¹¹ The remaining 95.3% was forfeited by the DA’s office.¹² Out of the 106 vehicles seized over that same span, 90 were either forfeited entirely or only returned after property owners agreed to pay a settlement of, on average, \$970 (pending cases excluded).¹³

FIGURE 3: Property owners in Cumberland County face long odds in civil forfeiture cases

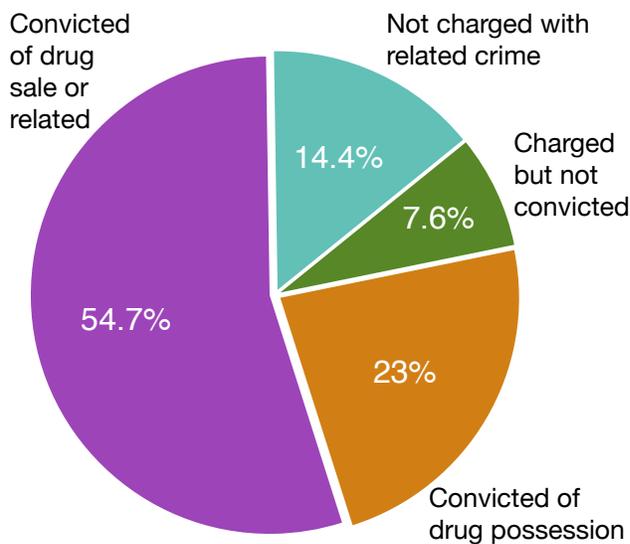


INNOCENCE IGNORED

Cumberland County law enforcement routinely forfeits the property of people who have not been convicted of a crime and are thus considered innocent under our criminal justice system. In fact, 22% of the forfeitures connected to property Cumberland County seized between 2011 and 2013 were directed against innocent people—including some people who were never even charged with a related crime.¹⁴ Yet these innocent people were only 1% more likely to get money back than the average claimant.¹⁵ And their odds of getting their vehicle back without making a settlement payment didn't improve at all.¹⁶ In addition, 23% of forfeitures in Cumberland County targeted people who had only been convicted of drug possession.¹⁷ These are cases where forfeiture often isn't logical, because any money still in a drug user's pocket necessarily could not have been used to buy drugs.¹⁸ Nevertheless, drug possessors were actually less likely than the average claimant to secure the return of their property.¹⁹

Innocent property owners in Cumberland County lose their property at such high rates because Pennsylvania's civil forfeiture laws are structured to prevent even people with strong cases from succeeding. Devoting time to fighting a forfeiture and spending money to hire an attorney simply do not make sense when doing so will cost more than the value of the property at stake. In recent years the median sum in cash-only forfeiture cases in Cumberland County was \$356.²⁰ As a result, many property owners had no rational choice but to give up. Out of all the cash-only forfeiture cases arising from seizures

FIGURE 4: Twenty-two percent of Cumberland County forfeitures target people never convicted of a related crime

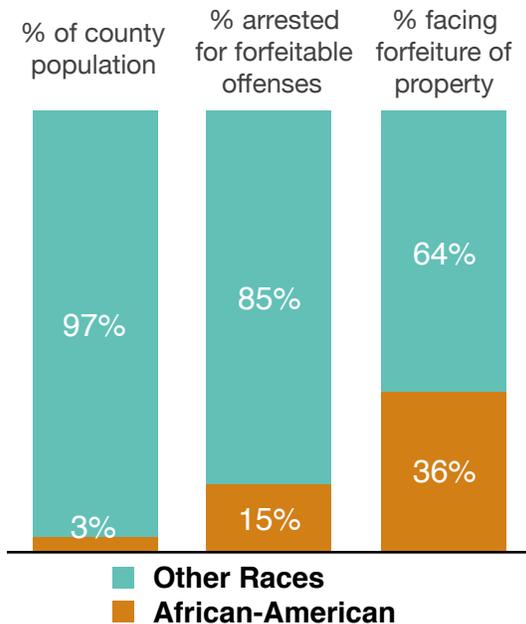


between 2011 and 2013, *not a single* property owner had money returned when the sum involved was less than \$356.²¹ In contrast, property owners secured the return of 12% of their money in cases for over \$356.²² These statistics are consistent with our report on Philadelphia County, which showed that property owners are less willing to fight forfeiture when the value of property at stake is low.²³

UNEQUAL ENFORCEMENT

The ACLU-PA's review of every forfeiture arising from property seizures between 2011 and 2013 showed that African-Americans in Cumberland County are disproportionately affected by civil asset forfeiture enforcement. While African-Americans compose only 3% of Cumberland County's population and 15% of those arrested for forfeitable offenses, African-Americans made up 36% of property owners in forfeiture cases.²⁴ This

**FIGURE 5: Civil forfeiture
unequally impacts communities
of color in Cumberland County**



means that Cumberland County law enforcement is *eighteen times* more likely to pursue forfeiture against African-Americans than people of other races.²⁵

The racially disparate impact of forfeiture enforcement in Cumberland County is similar to patterns revealed by the ACLU-PA’s investigations of Montgomery and Philadelphia counties.²⁶ The disturbing consistency of these findings across every county we have studied suggests that the structure of civil forfeiture may itself be discriminatory. Because law enforcement profits from forfeitures and litigation can be expensive, prosecutors have a strong incentive to pursue forfeiture cases that won’t be challenged. Enforcement strategies directed at people who can’t afford an attorney to challenge forfeiture, in turn, are likely to disproportionately affect low-income communities of color.²⁷ The danger posed by

this perverse incentive structure highlights the acute need for reform of our state’s broken asset forfeiture laws. Restricting the government’s incentive to forfeit property and to do so cheaply would reduce the risk of law enforcement pursuing the easiest targets instead of enforcing forfeiture laws fairly and evenly. Additionally, establishing a system of criminal forfeiture—which requires that forfeiture occur as part of the sentencing phase of a criminal trial and only after a person has been convicted of a crime—would guarantee that every person had a lawyer to stand up for their rights.²⁸ These are two commonsense reforms that would help ensure that forfeiture was used for legitimate crime-fighting purposes, instead of simply to boost the government’s budget.

KEY FINDINGS

- Annual forfeiture revenues are equivalent to roughly 10% of the Cumberland County DA’s budget
- Cumberland County law enforcement has kept large amounts of forfeited equipment for its own use, including three gaming systems and four video games
- In finalized cases, only 4.7% of the money seized for forfeiture was ever returned to property owners
- Property owners lost every cash-only case involving less than \$365
- 22% of forfeitures are filed against people who have not been found guilty of a related crime
- African-Americans in Cumberland County are eighteen times more likely to be targets of forfeiture than people of other races

Endnotes

1. For our analysis, we selected forfeiture cases arising out of seizures of property between 2011 and 2013. In our determination, this was the most recent data set available for which a large enough percentage of the related criminal cases had closed. Having a meaningful sample of closed criminal cases was necessary for us to draw conclusions about forfeiture and related criminality. Cumberland County DA's Office, *Seizure Activity by Date: Jan. 2010-Sept. 2015*, obtained through ACLU-PA Right-to-Know Request (record on file with ACLU-PA); Cumberland County DA's Office, *Forfeiture Activity Report*, obtained through ACLU-PA Right-to-Know Request (record on file with ACLU-PA).
2. Office of the Pennsylvania Attorney General, *Asset Forfeiture Report - Controlled Substances*, FY2013-14, 25 (forfeiture income of \$154,152.26) (from ACLU-PA Right-to-Know request); Office of the Pennsylvania Attorney General, *Asset Forfeiture Report - Controlled Substances*, FY2012-13, 23 (forfeiture income of \$683,077.88) (from ACLU-PA Right-to-Know request); see also Office of the Pennsylvania Attorney General, *Asset Forfeiture Report - Motor Vehicle Chop Shop*, FY2013-14 (from ACLU-PA Right-to-Know request); Office of the Pennsylvania Attorney General, *Asset Forfeiture Report - Motor Vehicle Chop Shop*, FY2012-13 (from ACLU-PA Right-to-Know request).
3. County of Cumberland, *2014 Strategy & Budget*, 137, <https://www.ccpa.net/2680/budget> (budget was \$3,978,759 in 2013 and \$4,145,687 in 2014). Because current law forbids lawmakers from adjusting law enforcement budgets in anticipation of forfeiture revenues, forfeiture income is always a supplement to, not a replacement for, the budgets allocated to law enforcement through the normal budgeting process. See 42 Pa. C.S. § 6801(f).
4. Attorney General, *Controlled Substances*, FY2013-14, *supra* note 2, at 25; Attorney General, *Controlled Substances*, FY2012-13, *supra* note 2, at 23-24.
5. "In service" is the phrase used to denote property that law enforcement has retained for its own use. See *supra* note 2. With a population of 235,406 as of 2010, Cumberland County had annual forfeiture revenue of \$1.78 per capita between fiscal years 2012-13 and 2013-14. United States Census Bureau, *State & County QuickFacts - Pennsylvania*, <http://quickfacts.census.gov/qfd/states/42000.html>. Total and per-capita forfeiture income ranks are based on the counties' average annual forfeiture income for 2012-2014 as reported in the Attorney General's forfeiture summaries for fiscal years 2012-13 and 2013-14, which compile summary data from mandatory annual county audits. Rankings could not be determined for Bucks, Fulton, McKean, and Tioga because the Attorney General's summary reports for both fiscal years lack data on these four counties. See *supra* note 2.
6. See Attorney General, *Controlled Substances*, FY2013-14, *supra* note 2, at 25; 42 Pa. C.S. § 6801(h) ("The district attorney... shall utilize forfeited property or proceeds thereof for the purpose of enforcing the provisions of The Controlled Substance, Drug, Device and Cosmetic Act"). The photo in Figure 2 depicts a Playstation 3. Source: Michel Ngilen — some rights reserved — <https://www.flickr.com/photos/20179579@N00/4227512080> — cropped version.
7. Conversation by Phone with Cumberland County Chief Deputy District Attorney Matthew Smith, Oct. 1, 2015 (notes on file with ACLU-PA).
8. *Id.*
9. See *Commonwealth v. \$9,847.00 U.S. Currency*, 704 A.2d 612, 614-16 (Pa. 1997) (claimant contesting civil forfeiture of currency has no right to appointed counsel).
10. Conversation - Chief Deputy DA, *supra* note 7 (DA estimate of percentage of forfeitures settled outside of court). The ACLU-PA corroborated the estimate provided by the DA's office by comparing records indicating the number of forfeitures arising from seizures between 2011 and 2015 against the number of forfeiture-related cases filed in court over the same span. See Cumberland County Clerk's Office, List of Docketed Forfeiture Cases Involving District Attorney from Jan. 2011 to Aug. 2015, obtained through ACLU-PA Records Request (data on file with ACLU-PA) (indicating number of court cases related to forfeiture filed between 2011 and 2015); Cumberland DA, *Seizure Activity*, *supra* note 1 (indicating total number of seizures for forfeiture over same span); Cumberland DA, *Forfeiture Activity*, *supra* note 1 (indicating total number of forfeitures that reached a final outcome over same span).
11. See *supra* note 1.
12. *Id.*
13. *Id.*

14. See *supra* note 1; see also Criminal Court Summaries of Claimants in Forfeitures Arising from Seizures Between 2011 and 2013, obtained from <https://ujportal.pacourts.us/DocketSheets.aspx>; Cumberland DA, Notes on Criminal Cases Related to Forfeitures Arising from Seizures Between 2011 and 2013, obtained through ACLU-PA Right-to-Know Request (records on file with ACLU-PA).
15. Between 2011 and 2013, prosecutors returned 6% of the money seized for forfeiture from property owners who were never convicted of a crime. By comparison, prosecutors returned 5% of the money seized for forfeiture from all claimants. *Id.*
16. Out of 13 vehicles seized from innocent property owners, prosecutors returned 11 for a settlement payment and two outright. That puts the rate at which prosecutors returned vehicles outright to legally innocent owners at 15%—the same rate at which prosecutors returned vehicles outright to all claimants. *Id.*
17. *Id.*
18. There may be cases where police arrest a person for drug possession while the arrestee is in the act of exchanging money for narcotics. Under those circumstances, money would be logically forfeitable as property the arrestee attempted to use to buy drugs (and therefore to “facilitate” a violation of narcotics laws).
19. Between 2011 and 2013, prosecutors returned 4% of the money seized for forfeiture from people convicted of drug possession. See *supra* note 14. By comparison, prosecutors returned 5% of the money seized from all claimants. *Id.* Out of 18 vehicles seized from innocent property owners, prosecutors forfeited two, returned 14 for a settlement payment, and returned two outright. *Id.* That puts the rate at which vehicles were returned outright to drug possessors at 11%—or 4% below the rate at which prosecutors returned vehicles outright to all claimants. *Id.*
20. See *supra* note 1.
21. *Id.*
22. *Id.*
23. Scott Kelly, *Guilty Property: How Law Enforcement Takes \$1 Million in Cash from Innocent Philadelphians Every Year — and Gets Away with It*, American Civil Liberties Union of Pennsylvania, 7-8, June 2015, <http://www.aclupa.org/issues/forfeiture/> (Philadelphia property owners only contested 4% of cases where the money at stake was below \$201 whereas they contested 26% of cases above \$400).
24. Census, *Cumberland County*, *supra* note 5 (demographic data estimates for 2011-2013); *Summary Arrest Report for County: CUMBERLAND*, Pa. Uniform Crime Reporting System, *query created at* <http://www.paucrs.pa.gov/UCR/Reporting/Query/Summary/QuerySumArrestUI.asp> (arrest statistics); Cumberland DA, *Forfeiture Report*, *supra* note 1 (forfeiture statistics); Cumberland DA, *Seizure Activity*, *supra* note 1 (forfeiture statistics).
25. Since African-Americans are 3% of Cumberland County’s population and 36% of Cumberland County’s forfeiture claimants, the likelihood of African-Americans being subjected to civil asset forfeiture enforcement compared to other race groups is calculated by dividing the first percentage into the second ($3/36=.083$) and then dividing that into the same figure for other race groups ($97/64=1.52$). This yields 18.31 ($1.52/.083$), which we rounded to 18. See *supra* note 1; Census, *Cumberland County*, *supra* note 5.
26. Kelly, *Guilty Property*, *supra* note 23, at 10 (African-Americans compose 44% of Philadelphia County’s population but 63% of property owners facing forfeiture); Scott Kelly, *Broken Justice: An Investigation of Civil Asset Forfeiture in Montgomery County*, American Civil Liberties Union of Pennsylvania, 6-7, Oct. 2015, <http://www.aclupa.org/issues/forfeiture/> (African-Americans compose 9% of Montgomery County’s population but 53% of property owners facing forfeiture).
27. See Sean Reardon et al., *Neighborhood Income Composition by Race and Income, 1990-2009*, *The Annals of the American Academy of Political and Social Science* 660(1), 78-97 (2015) (African-American and Hispanic households are much more likely to reside in lower income neighborhoods than households of the same income level but of another race).
28. See Pennsylvania Senate Bill 869, Printer’s No. 1015, and House Bill 508, Printer’s No. 1927 (proposed legislation to eliminate the profit incentive for forfeiture and to require forfeiture occur as part of sentencing after a person has been convicted of a crime).

Methodology & Credits

The primary data set used for this report was acquired through a records request to the Cumberland County District Attorney's Office. These records compiled data on every civil forfeiture arising from a seizure of property between 2011 and 2013 in Cumberland County. We also reviewed all the forfeitures filed in court between 2012 and 2014. Statistics referenced in this report are drawn from the former set of records.

For our analysis, we defined a forfeiture "case" as a seizure of property (for the purpose of forfeiture) from one person on a single date. If records showed seizure of property from the same person on different dates, each seizure was treated as a different case. If the same property was seized from multiple persons on one date, we divided the property equally across the claimants and treated them as separate cases. Using information provided by the DA's office, we located each claimant's criminal court summary (available via <https://ujsportal.pacourts.us/DocketSheets.aspx>), which lists the criminal cases against that person and the person's race. We excluded cases involving juveniles and counted cases where the criminal conviction had been expunged. Any criminal case with an arrest date within one year of the seizure date listed in the forfeiture file was treated as related for the purposes of our analysis (as well as any criminal cases the DA's office identified as related). We also treated as related any criminal cases filed in federal court or against true owners (even if property was seized from someone else).

Our statistical analysis has no margin of error because we reviewed data from all the cases initiated between 2011 and 2013.

Author

Scott Kelly

Editors

Sara Mullen

Molly Tack-Hooper

Researcher

Scott Kelly

Paul Anderson



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