
Civil Asset Forfeiture: Can Civil Asset Forfeiture Win The War On Drugs?

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You are driving down the highway. It is just a normal day like any other. The sun is out, clouds are rolling, and you are playing your favorite music. To make your day even better you are rich. To give you an idea of how rich you are, you have \$1,074,900 cash in a bag in your backseat. “Why?” I don’t know why. I don’t know what rich people do with their money. Neither does the state trooper who stopped you for driving too fast on that highway. Also, according to the Civil Asset Forfeiture Law if you are carrying around that much money at one time, it can’t be anything legal. To continue with your normal day, the officer pulls you over and notices the large sum of money in your backseat and immediately alarms in his head go off. So, you are asked to step out of the car while he searches the rest of your vehicle for anything else suspicious. The officer even goes to lengths to getting a K9 unit on the scene to sniff for drugs and such. Of course, the dog finds nothing because you are a law-abiding citizen, minus the speeding. The investigation has reached its end and although there was no other evidence of something illegal going on the state trooper, within his powers seizes your money.

I bet you’re wondering, “How could that happen? Can he get away with that? Is that even legal? Was a law even broken?” It did happen, it is legal, and technically no law was broken. It was July 18, 2013 when this happened in Nebraska. To answer the last question, the officer can get away with seizing your money if you don’t fight it in court. In this case the plaintiff, the driver because no crime was committed, went to the US District of Nebraska and they ruled in favor of the driver because there was no evidence of a crime being committed or a crime that has already been committed (Reid 2013).

When defining what crime is Hoyt E. Ray defined crime as “any act or omission to act which is prohibited by law, and which involves a penalty. It is a violation of the expressed will of the State to which a designated penalty applies” (Ray pg. 119). Which means that if a law is in place and you do an action that goes against that law, you are committing a crime. That includes actions that were legal then became illegal because of a law. Actions such as buying, selling, and drinking alcohol are included in the Volstead Act was implemented January 16, 1920 (Parkinson 2012). The Volstead Act “outlawed the production, distribution, and transportation of alcohol” (Parkinson 2012). According to Parkinson, the purpose was to bring an “age of moral and social reform” to America (Parkinson 2012). Instead crime “overwhelmed” the police force. According to Parkinson in “Prohibition and Rise of an American Gangster,” she mentioned how crime increased significantly. Parkinson wrote, “As organized crime syndicates grew throughout the Prohibition era, territorial disputes often transformed America’s cities into violent battlegrounds. Homicides, burglaries, and assaults consequently increased significantly between 1920 and 1933” (Parkinson 2012). But what do you call it when you are punished for a crime that you haven’t committed yet or you are being punished for a crime that seems like you will commit?

Looking at situations, such as the Prohibition Era where crime influenced a law, I have a theory, which is an abstract relationship between variables, that crime does influence the laws that are made. My independent variable, which is the variable that influences the dependent variable, is the presence of crime. My dependent variable, which is the variable that is influenced, is the law that is made (Baglione 2012). To evaluate my theory I formed a hypothesis, which is a more specific relationship between variables that can be tested (Baglione 2012). My hypothesis is that the violent crime rate and the property crime rate in earlier years influenced how strict the civil asset forfeiture law (CAF) is on citizens and how lenient the law is towards law enforcement. Another variable I feel influences the CAF law is drug usage in each state. My independent variables are the crime rates and the drug usage in each state and my dependent variable is the how strict the law is on the citizens and how much freedom law enforcement has in order to make civil asset forfeiture seizures.

The civil asset forfeiture law is a law that gives law enforcement the power to stop someone with a large amount of money and seize the money (Thomson Reuters). Looking at FindLaw’s blog about civil asset forfeiture, each state has different versions of the civil asset forfeiture law (Thomas Reuters). To better understand what asset forfeiture is, Alice Dery explained in her article “Overview of Asset Forfeiture.” She writes “Simply stated, it is the taking of property derived from a crime, involved in a crime, or which makes a crime easier to commit or harder to detect” (Dery 2012). In Dery’s

article she mentioned the history of asset forfeiture. She mentioned how asset forfeiture was practiced overseas against piracy. Dery said, "Asset forfeiture's early roots were grounded in admiralty law as a way for governments to prevent the owner of ships engaged in piracy and the smuggling of goods to continue their criminal activity" (Dery 2012). Admiralty is defined by Cornell Law School as "the distinct body of law (both substantive and procedural) governing navigation and shipping. Topics associated with this field in legal reference works may include: shipping; navigation; waters; commerce; seamen; towage; wharves, piers, and docks; insurance; maritime liens; canals; and recreation. Piracy (ship hijacking) is also an aspect of admiralty" (Cornell Law School). In the 1970s and 80s law enforcement started to go after the money which is the criminal's "lifeblood" (Dery 2012). This makes sense if you seize the money no illegal transactions can happen.

The history of the CAF law can be traced back to biblical times as well. In the King James Version of the Bible Exodus 21:28, it says "If an ox gore a man or a woman, that they die: then the ox shall be stoned, and his flesh shall not be eaten; but the owner of the ox shall be quit" (KJV) What does that mean? It means that if you are an owner of an ox and that ox kills someone then your ox must be killed and since it killed someone it is seen as tainted meat because it broke the law, also known as sin. Therefore, the ox can't be eaten, which was its purpose, and back in those times the Bible is law. The relation between the Bible verse and the CAF law is somewhat similar. Both include someone having ownership of something. Both include breaking the law. Also, both include taking that owned property for breaking the law. The difference between the two is one applies only when the crime is committed versus the other applies both before the crime is committed and after.

The CAF law has many purposes and reasons why it exists. The main purpose of CAF is to "give law enforcement a tool they can use to go after organized crime" (Snead). Jason Snead is a senior policy analyst in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation. Law enforcement use the proceeds from the seized assets to fight other criminals (Snead). The CAF law is another way for law enforcement to make money. The fact that this is another way for them to make money makes law enforcement susceptible to being corrupt and seizing wrongfully (Snead).

There are many examples of corrupt law enforcement. Jason Snead mentioned one example in his article, "Civil Asset Forfeiture: 7 Things You Should Know", about Tenaha, Texas law enforcement wrongfully "seizing cash and property from innocent drivers with absolutely no evidence of wrongdoing" (Snead). The corruption in Tenaha was known as "highway robbery" stated by Elora Mukherjee, Staff Attorney for ACLU Racial Justice Program. The highway robbery was "targeting those who could least afford to challenge the officers' abuse of power, under the guise of a so-called "drug interdiction" program and made possible by Texas's permissive civil asset forfeiture laws" (Mukherjee). According to the article Mukherjee wrote, Tenaha law enforcement seized approximately \$3 million from people between 2006 and 2008. None of the people that they took the money from was ever arrested. That is because of the CAF law not requiring an arrest. This is one of many examples where corruption has happened with the CAF law.

The connection between my independent variables, violent crime rate, property crime rate and drug use in each state, is the reason laws are made in the first place. According to Corley, Martinek, and Ward "law is a collection of principles and regulations established by judicial decision or by designated authority in a community and applicable to the people of that community in the form of legislation." If someone breaks the law that person is committing a crime, as defined earlier. If crime is rampant in a city the one action I would want to take is establish laws that will help bring down the crime in the city. Regarding drug use, if my city, town, or state is having a illegal drug problem I would set laws that would help deal with the drug problem in my area. That is the connection that crime has with laws and why I want to test the relationship between the wording of the law in each state and the crime and drug use that happens in the state.

Violent crime rate is measured by incidents per 100,000 people. For example, Alabama has a violent crime rate of 473 incidents every 100,000 people for the year of 2015 (FBI). Property crime is measured the same as well. Violent crime and property crime are categorized differently because they are different crimes. Violent Crime or personal crime is when a crime is done to an individual such as rape, murder, assault, kidnapping, etc (Raiser & Kenniff Attorney at Law). Property Crimes are offenses done to property such as theft, arson, forgery, etc (Raiser & Kenniff at Law). I planned to find a significant correlation between crime rates and the making of the law. For example, the seizure standard, I predicted that the higher the crime rate in each state the lower the seizure standard is for each state. That means that I predict that law enforcement is given more power to seize assets.

The CAF variables such as the seizure standard, whether the law enforcement can keep the assets seized or not keep the assets, and whether the law enforcement reports the assets seized or not report them. The CAF variables are measured differently, whether it be measured ordinally, nominally, or using interval measure. Nominal is the level of measurement that just puts numbers with names. This is the level of measurement I used for the reporting requirements which is stated in each state of how much the law enforcement is required to report to the FBI. It goes from 0-1. 0=not

required to report and 1=required to report (Baglione 2012).). An ordinal scale is when order matters and there is a rank. For example, if I was to rank intensity of violent crimes in each state I wouldn't have an exact number; it's an "ideological spectrum" (Baglione 2012 pg.177). Another example of an ordinal scale would be the seizure standard. The seizure standard is what is required of law enforcement in order to seize the money. According to the editors of FindLaw, in such cases, police "are only required to show that there is a preponderance of the evidence" (Thomson Reuters). The legal meaning of preponderance of evidence is "A requirement that more than 50% of the evidence points to something" (Cornell Law School). . If there was an exact number or "distance" between the variables, then it would be interval according to Baglione. she wrote "interval data are pieces of information that can be expressed in numeric form" (Baglione 2012 pg. 176). An example of an interval measure would be the data I used for crime rates. I measured the violent crime rate in 2015 0-3 where 0=300-350, 1=350-400, 2=400-450, and 3=450-500. Below is the key for the variables of my findings.

1. Seizure Standard
 - a. 0=Reasonable Suspicion
 - b. 1=Preponderance
 - c. 2=Clear and convincing
 - d. 3=Reasonable doubt
 - e. 4=Criminal conviction
2. Reporting
 - a. 0=no reporting
 - b. 1=reporting
3. Amount Law enforcement can keep
 - a. 0=none
 - b. 1=some
 - c. 2=all
4. Violent Crime Rate (per 100,000 people)
 - a. 0=350 or less
 - b. 1=350-400
 - c. 2=400-450
 - d. 3=450-500
5. Population
 - a. 0=less than 7 million
 - b. 1=less than 8 million
 - c. 2=less than 9 million
 - d. 3=less than 10 million
 - e. 4=less than 11 million
6. Property Crime Rate (per 100,000 people)
 - a. 0=less than 2,000
 - b. 1=2,000-3,000
 - c. 2=3,000-4,000
 - d. 3=4,000-5,000
7. Property Crime Total
 - a. 0=100,000-200,000
 - b. 1=200,000-300,000
 - c. 2=300,000-400,000
8. Violent Crime Total
 - a. 0=0-20,000
 - b. 1=20,000-30,000
 - c. 2=30,000-40,000

In order for the relationship between variables to be significant the number within the column where it says "Sig. (2-tailed)" must be no greater than .1. If the number is greater than .1 it cannot be accepted as a significant strength of relationship (Monroe). The number above it shows if it is a negative or positive relationship. For example, the relationship

between the Civil Asset Forfeiture seizure standard and the Total Property Crime FY 2015 is .190 and the number above it is .186. That means it is not accepted as a significant positive relationship.

Table 1: Correlations: Civil Asset Forfeiture Laws & Crime

		CAFseizur estandard	CAFreportin g	CAFkeep	Violent Crime Rate FY 2015 (Incidents per 100,000 people)	Total Violent Crimes FY 2015	Property Crime Rate FY 2015 (incidents per 100,000 people)	Total Property Crime FY 2015
CAFseizures standard	Pearson Correlation	1	.026	-.195	-.312*	.064	-.233	.186
	Sig. (2-tailed)		.858	.171	.026	.654	.100	.190
	N	51	51	51	51	51	51	51
CAFreportin g	Pearson Correlation	.026	1	-.152	-.065	.120	.096	.130
	Sig. (2-tailed)	.858		.287	.652	.400	.501	.362
	N	51	51	51	51	51	51	51
CAFkeep	Pearson Correlation	-.195	-.152	1	-.135	.032	-.141	-.118
	Sig. (2-tailed)	.171	.287		.344	.823	.325	.409
	N	51	51	51	51	51	51	51
Violent Crime Rate FY 2015 (Incidents per 100,000 people)	Pearson Correlation	-.312*	-.065	-.135	1	.076	.665**	.064
	Sig. (2-tailed)	.026	.652	.344		.598	.000	.656
	N	51	51	51	51	51	51	51
Total Violent Crimes FY 2015	Pearson Correlation	.064	.120	.032	.076	1	.109	.672**
	Sig. (2-tailed)	.654	.400	.823	.598		.448	.000
	N	51	51	51	51	51	51	51
Property Crime Rate FY 2015 (incidents per 100,000 people)	Pearson Correlation	-.233	.096	-.141	.665**	.109	1	.110
	Sig. (2-tailed)	.100	.501	.325	.000	.448		.443
	N	51	51	51	51	51	51	51
Total Property Crimes FY 2015	Pearson Correlation	.186	.130	-.118	.064	.672**	.110	1
	Sig. (2-tailed)	.190	.362	.409	.656	.000	.443	
	N	51	51	51	51	51	51	51

*. Correlation is significant at the 0.05 level (2-tailed).

**. Correlation is significant at the 0.01 level (2-tailed).

In my findings I found that there is a significant negative relationship between the crime rates and the seizure standard. Both violent and property crime rate had a significant relationship with the CAF seizure standard. This negative relationship means the higher the crime rate in the state the lower the seizure standard is in that state. This means more power is given to law enforcement to seize assets in states that have higher crime rates. Violent crime rate has a higher significance than property crime rate in relation to the seizure standard but it they are both significant, nonetheless. The other variables shown in the table have no significant relationship between each other.

The other table shows the drug usage per state provided by wallethub.com. Wallethub gets its resources from many outlets such as U.S. Census Bureau, Bureau of Labor Statistics, Centers for Disease Control and Prevention, Federal Bureau of Investigation and etc.

Table 2: Correlations: Civil Asset Forfeiture Laws & Drug Usage

		CAFseizurestandard	DrugUseStateRank	DrugUseandAddictionRank	LawEnforcementRank	CAFreporting	CAFkeep
CAFseizurestandard	Pearson Correlation	1	.123	.149	.073	.026	.195
	Sig. (2-tailed)		.390	.297	.609	.858	.171
	N	51	51	51	51	51	51
DrugUseStateRank	Pearson Correlation	.123	1	.840**	.394**	-.176	-.207
	Sig. (2-tailed)	.390		.000	.004	.216	.145
	N	51	51	51	51	51	51
DrugUseandAddictionRank	Pearson Correlation	.149	.840**	1	-.067	-.167	-.251
	Sig. (2-tailed)	.297	.000		.643	.241	.076
	N	51	51	51	51	51	51
LawEnforcementRank	Pearson Correlation	.073	.394**	-.067	1	.006	.027
	Sig. (2-tailed)	.609	.004	.643		.967	.854
	N	51	51	51	51	51	51
CAFreporting	Pearson Correlation	.026	-.176	-.167	.006	1	.152
	Sig. (2-tailed)	.858	.216	.241	.967		.287
	N	51	51	51	51	51	51
CAFkeep	Pearson Correlation	.195	-.207	-.251	.027	.152	1
	Sig. (2-tailed)	.171	.145	.076	.854	.287	
	N	51	51	51	51	51	51

** . Correlation is significant at the 0.01 level (2-tailed).

To read the data for my findings on drug use in each state in relation with the CAF law is based by rank. The rank of the drug use data is listed from #1 having the worst drug problems to #50 having the least drug problems. In my findings the variable that Drug Usage and Addiction Rank have a significant relationship with is the CAF Keep variable. In the table it shows a slight significant negative relationship between the two variables. This means that the states with law enforcement departments that don't get to keep the seized assets have more drug problems in their state. This is an odd finding because I did not predict this to a significant factor.

In conclusion the CAF law isn't implemented correctly. States that are ranked higher in drug use aren't related to the seizure standard. The CAF law isn't based on drug abuse in each state. Instead it is based on crime rate in each state which is a much more significant variable in relation to the seizure standard. The higher the crime rate the more power given to the law enforcement, therefore less power is given to the citizens.

Not many agree with the civil asset forfeiture. According to ACLU, American Civil Liberties Union, "police abuse of civil asset forfeiture laws has shaken our nation's conscience" (editors of ACLU). ACLU believes that civil asset forfeiture isn't working for the citizens. According to ACLU, law enforcement is making seizures to profit from the money. Another source supports this claim by bringing up numbers. Martin Armstrong wrote in his article, *Police Civil Asset Forfeiture Exceed All Burglaries in 2014*, that police are abusing their power by seizing more than what criminals steal (Armstrong 2015). Armstrong described that in 2014 law enforcement seized up to \$4.5 billion versus \$3.9 billion worth of goods were stolen by criminals. In the words of Armstrong, "This means the police are taking more than the criminals." (Armstrong 2015).

These articles show the money side of how the civil asset forfeiture law works. These articles don't explain or show the numbers this law was intended for. I tested my hypothesis by looking at the violent crime rate and property crime rate in each state for the year of 2015. I also looked at the population and the number of incidents for both types of crime, violent and property. I also looked at how strict the law is for the citizen and how lenient the law is for the police. I did this to determine if there is a pattern between states with stricter laws and higher crime rates. I found there to be a positive relationship between the variables. A positive relationship between variables is where both variables increase or decrease in the same direction. A negative relationship is the opposite where one variable goes one way and the other variable goes the opposite direction (Baglione 2012 pg.177-178).

I find these articles that are not in favor of the civil asset forfeiture law to be looking at this at the wrong angle. The purpose of this law isn't to compare who takes more money. The purpose of this law is to fight crime that involves large money transactions whether it be human trafficking, organized crime like in the 1920s, and to fight the "war on drugs" (Thomson Reuters). To determine whether or not civil asset forfeiture works you must look at the right variables.

Along with these articles that are not in favor of the CAF law, there are articles that show evidence that the law may be under reform. Articles such as, "Supreme Court Justices Signal They Will Put Limits on States' Power to Fine" (Stohr 2018). In this article it talks about how a Tyson Timms was arrested for selling heroin and had his \$42,000 Land Rover, his vehicle, seized under the CAF law. Then talks about how the seizing of his vehicle was "disproportionate" to the \$10,000 fine for selling heroin (Stohr 2018). This opens the conversation to reforming the entire law itself and discussing just how much power law enforcement should be given to enforce this law while also not infringing on citizens' constitutional rights such as the right to be protected from cruel and unusual punishment. That is the reason the Supreme Court ruled against Indiana. The Constitutional Accountability Center wrote, "In a unanimous ruling, the Court agreed, holding that the Eighth Amendment's prohibition against "excessive fines" applies to the states under the Due Process clause of the Fourteenth Amendment" (Constitutional Accountability Center). This holds all states accountable to abide by the 8th Amendment when it comes to CAF. This decision also starts the conversation for reform that this law needs. That is because the law isn't made and interpreted in different states on the purpose of what it is made for. The purpose of this law is to fight the war on drugs (Thomson Reuters). But based on my findings the law isn't interpreted in the states based on drug data. Instead it is based on crime rate, specifically, violent crime rate. Not only does this law not serve its purpose, it also puts citizens at risk by giving law enforcement too much power to seize assets in states that, based on the data, require giving law enforcement that much power.

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