How police, feds team up to seize property

Officials say revived policy will help avoid wrongful forfeitures.

Local police departments can once again seize people's property and cash with federal help under a Justice Department policy unrolled Wednesday. A similar program was so criticized as ripe for abuse that the Obama administration all but shut it down.

Officials insist they've now equipped the policy, called adoptive forfeiture, with safeguards to keep authorities from taking cash and property without justification. Law enforcement groups praised the initiative, which has helped them pay for everything from drug dogs and bulletproof vests to overdose antidotes.

But civil liberties groups and some members of Congress called Attorney General Jeff Sessions' policy a dangerous reversal that opens the door for constitutional rights violations.

Adoptive forfeiture

The program is a type of asset forfeiture that allows police to skirt often more restrictive state laws to seize property using federal law. They then share up to 80 percent of the proceeds with federal counterparts. For some police departments, the money can be an important funding source. More than $6 billion in forfeited funds has been shared with state and local law enforcement since fiscal year 2000, according to the Justice Department's inspector general.

The department sees the program as a way to strip suspects of the proceeds of their activities, to deter crime and to compensate crime victims. Deputy Attorney General Rod Rosenstein said Wednesday the move will help fight drug dealing that has perpetuated the nation's opioid epidemic.

“If we seize and forfeit criminal proceeds from drug dealing, it’s going to result in less money to reinvest in drugs by that dealer,” he said. “And it's going to have a deterrent effect.”
The problems

Former Attorney General Eric Holder sharply curtailed the practice after critics said it was too easily abused, particularly with police seizures of small amounts of cash. The department’s inspector general this year reported what it called weaknesses throughout the overall asset forfeiture program — including with adoptive forfeiture — such as poor data collection and analysis, and inadequate training of local and state officers.

New safeguards

Key changes include requiring more detail from police agencies about probable cause justifying a seizure before federal authorities get involved. Also, the Justice Department will have to decide more quickly whether to take on local seizures and also let property owners know their rights and the status of their belongings within 45 days of a seizure, faster than federal law requires.

Another key change will make it harder for police to seize less than $10,000 unless they have a state warrant, have made an arrest related to the seizure, have taken other contraband, such as drugs, along with the money, or the owner has confessed to a crime. Without at least one of those conditions, authorities will need a federal prosecutor’s approval to seize it under federal law.

Old rules set that threshold at $5,000, and the old process rarely required a federal prosecutor’s sign-off.

Critics say that doesn’t fix the larger problem, because police departments will still rely on forfeitures to foot their bills, creating a profit incentive to take property.

The reaction

The move is in keeping with Sessions’ tough-on-crime agenda in which he has stated that the department’s top priority should be helping local police combat violence. But it comes following bipartisan agreement that asset forfeiture in its entirety should be overhauled.

Republican Sen. Mike Lee, who along with Democratic counterparts had been pushing for tighter regulations of the practice, said Wednesday his pleas were ignored.

“Instead of revising forfeiture practices in a manner to better protect Americans’ due process rights, the DOJ seems determined to lose in court before it changes its policies for the better,” said Lee, of Utah.

The ACLU called it another step by Sessions to “bring back the failed and racist War on Drugs.”

More than 20 states have enacted their own laws limiting asset forfeiture, either by first requiring a criminal conviction or by raising the threshold for when police can take property during an investigation. In at least one state, Pennsylvania, and in Washington, D.C., police are prohibited from referring their property seizures for federal adoptive forfeiture, which means they can’t take part in the program.

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