



Civil Forfeiture in California: Facts about the “Equitable Sharing” Loophole

Under California law, police can take property suspected of involvement in criminal activity—a process called civil forfeiture—only if relatively high standards are met. And they may keep only 65 percent of proceeds from property they take. Prosecutors keep 10 percent, while 24 percent goes to the state’s general fund.

However, through a federal program called “equitable sharing,” police may instead turn property over to the federal government for forfeiture. Federal law has lower standards for forfeiting property and provides a larger share of proceeds to the police—as much as 80 percent. This gives police an incentive to use federal law as a way to avoid the mandates of California law, diverting funds from the state treasury and likely resulting in forfeitures that would not pass muster under state law.

The facts about civil forfeiture in California suggest that evading state law is exactly what law enforcement agencies are doing by using equitable sharing.

In California, forfeitures under federal law have outpaced those under state law by about two-to-one from 2002 to 2009.

The use of equitable sharing by California law enforcement agencies has risen dramatically in recent years, while the value of forfeitures conducted under state law have remained steady. Agencies appear to increasingly favor easier and more generous federal forfeiture laws to the stricter standards of California law.

	Value of assets forfeited under California law	Forfeiture funds received through equitable sharing under federal law*
2002	\$25,565,686	\$26,223,193
2003	\$26,589,893	\$25,376,148
2004	\$22,459,346	\$32,889,323
2005	\$19,866,810	\$39,504,100
2006	\$25,582,483	\$44,429,290
2007	\$27,603,822	\$49,821,852
2008	\$25,548,228	\$106,218,396
2009	\$28,789,945	\$126,950,916
Total	\$202,006,213	\$451,413,219
Average per Year	\$25,250,777	\$56,426,652

* Includes funds received from the U.S. Dept. of Justice and the U.S. Treasury Dept., as well as those received from other law enforcement agencies. This measure underestimates the amount of equitable sharing activity because it excludes proceeds kept by the federal government.

Sources: California Dept. of Justice Asset Forfeiture Annual Reports, 2002-2009; equitable sharing data compiled from the Annual Equitable Sharing Agreement and Certification Reports filed with the U.S. Dept. of Justice by each California agency, including police, sheriffs, task forces and prosecutors, that received equitable sharing funds.

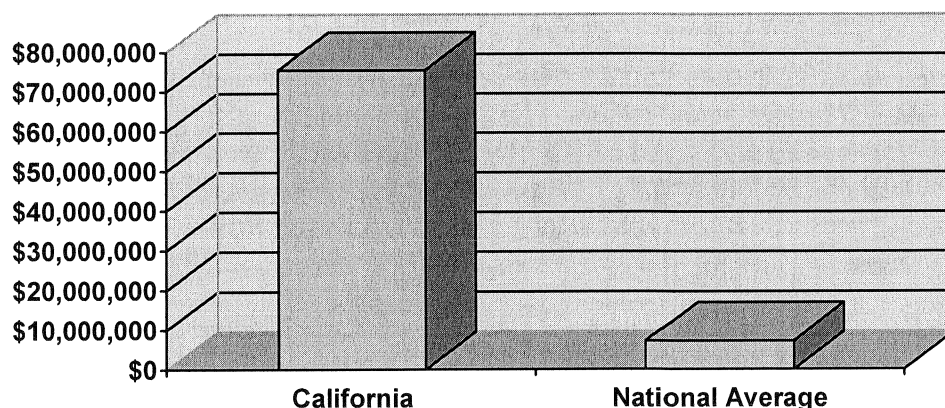
The equitable sharing loophole may have cost California's general fund at least \$108 million from 2002 to 2009.

From 2002 to 2009, California law enforcement agencies received more than \$451 million in equitable sharing payments. If all of those forfeitures had instead been successfully conducted under state law, 24 percent of those funds—or \$108 million—would have gone to the state's general fund and perhaps more since these payments exclude forfeiture proceeds kept by the federal government.

California equitable sharing far outpaces all other states.

In 2010, law enforcement agencies in California received \$75.5 million in equitable sharing payments from the U.S. Department of Justice alone—the most of any state and nearly 20 percent of all DOJ equitable sharing payments nationwide. In that year, California received more than 10 times the national average in equitable sharing payments from the DOJ.

*Equitable Sharing Payments to States
From Department of Justice Assets Forfeiture Fund, 2010*



Source: U.S. Dept. of Justice FY2010 Asset Forfeiture Funds Reports, www.justice.gov/jmd/afp/02fundreport/2010affr/report2btxt.htm.

National research shows that law enforcement agencies use equitable sharing to circumvent stricter and less financially rewarding state laws.

A national study published in the *Journal of Criminal Justice* finds that equitable sharing use rises when state laws are stricter and less generous. The authors conclude that state and local law enforcement are using equitable sharing to evade the demands of state laws.

*Source: Holcomb, J., Kovandzic, T., & Williams, M. (2011). Civil asset forfeiture, equitable sharing, and policing for profit in the United States. *Journal of Criminal Justice*, 39, 273–285.*