

OHIO PROSECUTING ATTORNEYS ASSOCIATION

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John E. Murphy
Executive Director

Memo To: Judicial Branch and Administration of Justice Committee
From: Paul Dobson, Wood County Prosecutor, President
Date: April 13, 2017
Re: Forfeiture

We oppose any recommendation that civil forfeiture be prohibited, whether in the constitution or otherwise.

No one would seriously argue that a bank robber should be able to keep the proceeds of a bank robbery, whether he is criminally prosecuted or not.

So why should a drug dealer be able to keep the proceeds of his drug dealing, whether criminally prosecuted or not?

Whether the person is criminally prosecuted or not is irrelevant to whether he should be able to enjoy the profits from crime. If the state can prove, by clear and convincing evidence, that this cash or other assets are the fruits of criminal activity, should they not be subject to forfeiture, whether the person is criminally prosecuted or not? If the person can keep and enjoy the fruits of crime if the state doesn't have enough to prove a criminal case beyond a reasonable doubt, but can prove the civil case by clear and convincing evidence, then the state's policy that one should not be able to profit from crime is seriously undermined.

Civil forfeiture is simply a means of carrying into effect the state's policy that one should not be able to profit from crime. Property derived from criminal activity is not legitimately owned property, and should be subject to forfeiture if the government can prove its case in a court of law, by clear and convincing evidence.

The same applies to forfeiture of instrumentalities, property used to commit crimes, with the added feature that in these cases the state must also show to the satisfaction of the court that the forfeiture of the property is proportional to the severity of the offense and the extent of the owner's participation in the offense.