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The Latest Trends of Asset Forfeiture Transparency and Juvenile Justice

By Ronald Lampard

Over 100 years ago, United States Supreme Court Justice Louis Brandeis famously [wrote](#), “Sunlight is said to be the best of disinfectants.”¹ Brandeis was making the case that transparency by government agencies would make for better government, with these agencies being fearful of having their misconduct being exposed. This principle has recently been adopted by states regarding civil asset forfeiture. Over the last two years, many states passed laws providing for increased transparency of the asset forfeiture process.

In many states currently, most records regarding asset forfeiture do not provide information essential to evaluating a government agency’s use of the process. Frequently, they fail to reveal basic information such as the type of property that was seized and forfeited, the size of the average forfeiture, the estimated value of property retained for government use or whether the individual whose property was seized and subsequently forfeited was convicted or even charged with a crime.

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Over the last few years, however, many states have passed laws providing for more openness and transparency regarding the civil asset forfeiture process. The ALEC model [Reporting of Seizure and Forfeiture Act](#) has been adopted in those states that sought to improve such oversight of their asset forfeiture process.² The ALEC model policy and the laws passed in the states require government agencies that seize and/or subsequently obtain judgments of forfeiture over the property of individuals to report certain information about the property and the nature

of the seizure. The trend in the states certainly has been to shed light on the asset forfeiture process and its outcomes.³

Another issue that has gained traction in the states is raising the age of juvenile jurisdiction in criminal cases. In fact, over the last two years, many states have raised the age of juvenile jurisdiction by passing laws which presumptively treat 17-year-olds and anyone under as juveniles. Currently, only four states have not passed laws to treat individuals under the age of 18 as juveniles in the criminal justice system.⁴ The ALEC model [Resolution to Treat 17-Year-Olds as Juveniles](#) has been adopted by several states that looked to improve their respective juvenile justice systems.⁵

Both asset forfeiture reporting and raising the age of juvenile jurisdiction will likely continue to be addressed by states. If current trends continue, many states will pass legislation addressing one or both of those issues. In essence, the last few years demonstrate that there is keen interest for policymakers in these particular areas of criminal justice.

A. Civil Asset Forfeiture Transparency

Asset forfeiture is the permanent taking of private property by government agencies at the local, state and federal levels. Civil asset forfeiture abuses in various states throughout the country are well-documented. There are several instances where individuals have seen their property seized by the state or federal government, despite the fact they were never charged with a crime. Additionally, it is very difficult for individuals to get their seized property back. For those whose property has been forfeited in favor of the government after it has been seized, that process is even more daunting. Frequently, it is more costly to attempt to get the seized property back, as hiring an attorney for representation is often prohibitively expensive. In addition, in many instances the burden is on the individual whose property was seized to prove the property's "innocence." States have begun to address these issues and make improvements to the status quo.

Mississippi

The 2017 legislative session saw Mississippi undertake the task of civil asset forfeiture reform by making the process more open and transparent. With the passage of [House Bill 812](#) (HB



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812), government agencies are required to obtain a seizure warrant within 72 hours of a seizure.⁶ They must also follow up with a request to proceed with the forfeiture within 30 days of the seizure. Furthermore, the law requires that the Mississippi Bureau of Narcotics maintain a website which shows the descriptions and values of seized property, which agency seized the property and any court petitions challenging the seizures. The new law will also hold agencies more accountable by withholding grant funding from any state agency that fails to comply with the new reporting requirements.⁷ The bill passed via a 118-3 [vote](#) in the House⁸ and a 51-0 [vote](#) in the Senate.⁹

Making the asset forfeiture process more open and transparent was a significant undertaking for Mississippi.¹⁰ In fact, in 2016 the Mississippi legislature passed a [law](#) that established the Civil Asset Forfeiture Task Force.¹¹ The Task Force was charged to: “(a) review all civil asset forfeiture laws and make recommendations to the Legislature for amendments to Mississippi civil asset forfeiture laws that

protect innocent property owners; (b) assure greater transparency; and (c) provide greater due process while ensuring that assets used or obtained through unlawful practices are removed from the possession of criminals.”¹² The members of the Task Force consisted of several stakeholders in the criminal justice system and included members of the legislature, individuals representing various law enforcement agencies and the public defender’s office.

In 2016, a poll commissioned by the Mississippi Center for Public Policy and conducted by Mason Dixon Polling & Research Inc. showed Mississippians overwhelmingly [disapproved](#) of civil asset forfeiture. In fact, 88% were opposed to permitting law enforcement to seize and permanently take away property from people who were not convicted of a crime.¹³ The broad support for civil asset forfeiture reform likely spurred the Mississippi legislature to pass legislation that mandated asset forfeiture reporting.



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Illinois

The Land of Lincoln continued the trend of states making their asset forfeiture process more transparent. Governor Bruce Rauner [signed](#)¹⁴ [House Bill 303](#)¹⁵ ([HB 303](#)), which places additional protections on individual property rights. HB 303 passed by a 100-1 vote in the Illinois House of Representatives and without any “no” votes in the Illinois Senate.¹⁶

The new law makes the civil asset forfeiture process more [open and transparent](#).¹⁷ For example, it requires reports to list the total number of asset seizures made by each agency and the monetary value of all property seized. Furthermore, it mandates that asset seizures and forfeitures be posted to a public, searchable database on the Department of State Police’s website. In addition, pursuant to the law the agency is required to report how its forfeiture fund expenditures are used. Moreover, the state may withhold funds from agencies that fail to comply with these reporting requirements.¹⁸

Similar to Mississippi, asset forfeiture reform in Illinois was widely supported. In fact, according to a poll commissioned in 2016 by the Illinois Policy Institute, 89% of registered voters support asset forfeiture reform.¹⁹ This included 86% of Repub-

licans, 89% of Independents and 93% of Democrats.²⁰ This broad, bipartisan support for civil asset forfeiture reform demonstrated in the poll did not go unnoticed, as Illinois ultimately decided to address the issue.

This trend has continued in 2018, as Idaho passed [HB 447](#)²¹ and New Hampshire passed [SB 498](#).²² Like the reforms passed last year in Mississippi and Illinois, these measures will help illuminate asset forfeiture practices in their respective states. More specifically, these laws require agencies to report if the property owners were charged criminally, whether the seized property was returned or forfeited and the value of the forfeited property.

At the federal level, Attorney General Jeff Sessions established a Director of Asset Forfeiture Accountability within the Office of the Deputy Attorney General.²³ While the directive did not require making information regarding seizures and forfeitures public, it requires the prompt review and the taking of “appropriate action relating to any complaints concerning the Department’s conduct of asset forfeiture that may arise from judges, attorneys, defendants, or other sources.” It also requires the Director to “gather such data and make such recommendations as will advance the integrity, efficiency, and effectiveness of the program.”²⁴

This announcement came after the publication of a [report](#)²⁵ in 2017 by the Justice Department's Office of Inspector General, which stated that poor data collection and analysis by the department made it impossible to state conclusively whether property seizures "benefit law enforcement efforts, such as advancing criminal investigations," or "the extent to which seizures may present risks to civil liberties."²⁶ In addition, several Senators, including Senator Mike Lee, have [questioned](#) the practice of civil asset forfeiture.²⁷ Asset forfeiture has a key role in the criminal justice system, but only when appropriately balanced by sufficient protections for the innocent.

MS HB 812, IL HB 303, ID HB 447 and NH SB 498 contain several provisions of the ALEC model *Reporting of Seizure and Forfeiture Act*. One feature they share with the ALEC model policy is a requirement that government agencies that have conducted either seizures or forfeitures be more forthcoming about their asset forfeiture process. Both Republicans and Democrats have supported these reforms, as evidenced by the broad, bipartisan support for the measures. Though no legislation concerning asset forfeiture reporting has been seriously considered by Congress, it is encouraging that the Attorney General made small steps to improve the asset forfeiture process. However, agency reporting requirements are absolutely crucial, as the public could become better informed about civil asset forfeiture and whether it is used properly or improperly. Ultimately, these reporting requirements allow for a more open and transparent civil asset forfeiture process, which best serves the public.

B. Juvenile Justice

"Raise the age" bills have been passed at some point in almost all 50 states and allow for youths to be treated as juveniles unless they have committed certain violent offenses, such as murder, rape and armed robbery. Importantly, in those instances of serious, violent crimes, the offender can still be tried in an adult court due to the severity of these crimes. Giving juveniles who commit a crime the chance to enter into the juvenile system increases the chances of successful rehabilitation by providing them coun-

selors, classes and community service opportunities to teach them how to be productive members of society.²⁸

The Center for Disease Control has [found](#) that placing 17-year-olds in a juvenile facility reduces recidivism rates by 34%.²⁹ Additionally, while rehabilitating juveniles increases public safety, it also saves taxpayer funds and increases economic productivity. In Wisconsin, for example, a study [showed](#) there is an estimated \$5.8 million saved for every 1,000 youths that are put into the juvenile system rather than the adult system.³⁰ These savings can be seen in reduced costs of incarceration, court costs, and an overall reduction in the number of crimes committed.

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Legislative Trends in the States

In 2018, Missouri [passed](#) a law that provided for those offenders under the age of 18 to be presumptively treated as juveniles in the criminal justice system.³¹ Prior to 2017, both North Carolina and New York automatically treated offenders as young as 16-years-old as adults. However, in 2017 both [North Carolina](#)³² and [New York](#)³³ raised the age of juvenile jurisdiction and offenders who are under the age of 18 in both states will be presumptively treated as juveniles.³⁴ These laws will go into effect in 2019. Previously, in 2016 both Louisiana and South Carolina passed raise the age measures that provided for those offenders under the age of 18 to be presumptively treated as juveniles

in the criminal justice system.³⁵ As of 2018, 46 states have passed legislation to treat 17-year-olds as juveniles. Currently, only Georgia, Michigan, Texas and Wisconsin have not passed laws raising the age of juvenile jurisdiction.

Importantly, raise the age laws enacted in such states as Missouri, North Carolina and New York will not affect the option to charge 17-year-olds accused of certain crimes as adults.³⁶ For example, if an offender as young as 15-years-old committed a violent crime such as a homicide, rape or armed robbery, they could still be charged as an adult and subsequently sentenced as an adult upon conviction.³⁷ However, for lesser crimes such as felony theft, drug possession, misdemeanors or other nonviolent crimes, convicted 17-year-olds would be charged, adjudicated and sentenced as juveniles. This is a key change that [advocates](#) stated will help rehabilitate the offender.³⁸ Furthermore, the initial costs that states may incur of placing 17-year-olds in the juvenile justice system will be an investment in long-term improved outcomes, as well as result in long-term savings. For example, in 2007 Connecticut began the shift of presumptively treating 17-year-old offenders as juveniles in its criminal justice system and eventually saw a [reduction](#) of roughly \$2 million in overall annual juvenile justice spending in its budget.³⁹

Missouri, North Carolina and New York provide demonstrative examples of allowing a balance between offering alternatives to incarceration for nonviolent, low-risk juvenile offenders while simultaneously being tough on violent or repeat offenders and not compromising public safety. ALEC also supports alternatives to incarceration for these types of offenders, particularly those who are under the age of 18. This is reflected in the ALEC model *Resolution to Treat 17-Year-Olds as Juveniles*. Ultimately, given the legislative trends in the states in the last few years, the four states that still treat 17-year-olds as adults will likely consider measures in the future to presumptively treat 17-year-olds as juveniles in their respective criminal justice systems.

CONCLUSION

Both asset forfeiture transparency and raising the age of juvenile jurisdiction have seen broad, bipartisan support in states that have sought to improve their criminal justice systems. Both measures improve the criminal justice system in different but significant ways. Bringing reporting requirements to the asset forfeiture process helps to protect individuals against abuses by government agencies. Raising the age of juvenile jurisdiction has contributed to better public safety and reduced costs of incarceration.

The legislative trend in the states certainly has been to address both of these issues. The next few years will likely see additional states address both asset forfeiture transparency and raising the age of juvenile jurisdiction. Criminal justice legislation will certainly continue to pass in the states. It is crucial that the laws passed seek to improve public safety, reduce spending and provide for a fairer criminal justice system. Fortunately, asset forfeiture transparency and raising the age of juvenile jurisdiction accomplish all of these goals and merit serious consideration by the states.

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