

# **I DON'T KNOW WHY I'M HERE.**

**Observations from  
Cook County's Civil  
Asset Forfeiture  
Courtrooms.**



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**Chicago Appleseed Center for Fair Courts  
+ Chicago Council of Lawyers**



*Chicago Appleseed Center for Fair Courts is a volunteer-led, collaborative 501(c)(3) non-profit organization advocating for fair, accessible, and anti-racist courts in Chicago, Cook County, and across the state of Illinois.*



*The Chicago Council of Lawyers is Chicago's public interest bar association, advocating for the fair and effective administration of justice.*

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# SUMMARY

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**The process of civil asset forfeiture (CAF) allows the government to take ownership of a private citizen's property if that person has been suspected of a crime.**

The civil forfeiture process – whereby police seize and prosecutors litigate to take people's private property, including cash, vehicles, and homes or other property – differs from *criminal* forfeiture because the latter can occur only after a conviction. Civil forfeiture does not require that a property owner be charged or convicted of a crime before the government can seize their assets. In Illinois, law enforcement agencies can keep up to 90% of the proceeds they gain through CAF to supplement departmental funding.

While academics and advocates have critiqued the expansion of civil asset forfeiture, little research has looked into the court process or the experience of property owners navigating this system. This report presents cursory findings about civil asset forfeiture in the Circuit Court of Cook County based primarily on observation of over 230 cases involving civil asset forfeiture. Among other things, our findings show:

- The most common reasons for seizure are allegations of non-violent crimes: drug possession, driving without a license, and aggravated fleeing or eluding.
- Over 90% of cases observed by court-watchers<sup>1</sup> where the property was identified involved a vehicle being seized. The median value of property seized was \$7,050.
- Many property owners (at least 19% of those observed) were confused about the CAF process and had minimal guidance. Most property owners (67%) did not have an attorney.
- All judges observed were largely regarded as impartial, although demeanor and communication varied. Around 22% of the cases observed involved some sort of administrative difficulty, such as the property owner being unaware of their case number, and another 11.7% of cases experienced difficulties with Zoom teleconferencing.

Civil asset forfeiture is a confusing, costly, and lengthy process that is ineffective at deterring crime, does not have an impact on crime rates, and disproportionately harms lower-income people of color. In this report, we describe the harms experienced by self-represented litigants in Cook County's CAF courtrooms and advocate for the end of civil asset forfeiture in the state of Illinois.

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<sup>1</sup> Court-watchers were only able to record the value of items seized in 14% of cases.

# ABBREVIATIONS

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**ASA** | Assistant State’s Attorney

**CAF** | Civil Asset Forfeiture

**CAFRA** | Civil Asset Forfeiture Reform Act (2000)

**CPD** | Chicago Police Department

**CCSAO** | Cook County State’s Attorney’s Office

**DOJ** | U.S. Department of Justice

## KEY TERMS

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### Court-Watcher

Chicago Appleseed Center for Fair Courts court-watchers are individuals, usually community volunteers, who observe court sessions in-person, at a courthouse, or virtually, via teleconference.

### Fee Waiver

All litigants must file a Notice of Appearance, and there is a mandatory fee to file the Notice. If the participant cannot pay this fee, they may ask the Cook County Clerk for a fee waiver application and submit this to the court. The judge then decides whether the fee will be waived or reduced. Hardship Motions - A Hardship Motion, also called a Hardship Exception, is a request for return of your vehicle temporarily after it has been taken by law enforcement. You must show that you have a “substantial hardship – for example, that you are unable to get to work, find childcare, or visit the doctor without your vehicle.

### Innocent Owner

The innocent owner is the owner of the seized asset(s) who did not engage in and often knows little to nothing about the unlawful activity alleged by law enforcement in seizing said asset(s). To retrieve their property, such individuals bear the burden of proving a negative. They must prove a lack of knowledge or consent to the use of property in an alleged crime by someone else. In CAF calls, property owners who did not know about or engage in any associated allegedly unlawful activity have a right to file an “innocent owner” claim which is the court’s provision to such owners. However, there is a question as to whether property owners, often navigating CAF calls without attorneys, are made aware of such a process to get back their property.

### Property Owner

A property owner is the individual who owns the seized asset(s). Since many parties can be involved in a civil asset forfeiture case (e.g., lienholder, the individual who engaged in the allegedly unlawful activity involving the property, etc.) and the asset retrieval process that ensues after seizure by law enforcement centers around the property owner, it is important to make the distinction between the person who actually owns the property and other parties who were, for example, tangentially involved or involved by proxy.

# HISTORY + BACKGROUND

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**Civil asset forfeiture (CAF) is a process whereby the government seizes people’s private property – including cash, vehicles, homes, or other property – if they are suspected of being involved in a crime.**

**CAF differs from *criminal forfeiture* because the latter occurs only after a person is *convicted*, whereas *civil forfeiture* does not require criminal charges nor a conviction.<sup>2</sup>** A property owner’s guilt or innocence is often irrelevant to the civil forfeiture of property. In Illinois, police departments are allowed to keep up to 90% of the proceeds<sup>3</sup> from asset forfeiture and use them to supplement their traditional funding.

Innocent people regularly become ensnared in CAF cases that derail their lives and cause economic hardship. On June 21, 2016, for example, Chicago mechanic Spencer Byrd (who is part of a class action lawsuit filed by the Institute for Justice in 2019<sup>4</sup> that takes on the City of Chicago’s impound practices) offered to drive a client home. During the drive, Mr. Byrd, a Black man, was stopped by a Chicago Police Department (CPD) officer for a broken turn signal. The CPD officer chose to search the vehicle and claimed to have found drugs in the passenger’s pocket. Despite the fact that no drugs were found on Mr. Byrd, the Chicago Police arrested him and impounded his car. Although he was released without charges, his innocence was not enough to get his car back—the City of Chicago required that Mr. Byrd pay over \$17,000 in towing and storage fees for his car. The situation is made even more ridiculous by the fact that his work tools remained in the trunk of the car, which hindered him from doing work that might allow him to pay the fees.

While academics and advocates have critiqued the expansion of civil asset forfeiture – calling it not only a vestige of the War on Drugs but also a cash grab by police departments at the expense of citizens<sup>5</sup> – little research has looked into the court’s processes for civil asset forfeiture and the experiences of property owners forced to navigate the system. This report strives to present cursory findings about the Cook County CAF Courts based on court watching data and Illinois CAF data.

## THE RISE OF CIVIL ASSET FORFEITURE

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Civil asset forfeiture laws have a long history in the U.S. that date back to British Common Law.<sup>6</sup> However, asset forfeiture only became a standard law enforcement tool in the 1970s; specifically, Section 881 of the

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<sup>2</sup> Worrall, J. (2001). Addicted to the Drug War: The Role of Civil Asset Forfeiture as a Budgetary Necessity in Contemporary Law Enforcement. *Journal of Criminal Justice*, 29(3), 171-187.

<sup>3</sup> The percentage of CAF profits a law enforcement agency is able to keep is determined by the state.

<sup>4</sup> Institute for Justice. (2019). “Spencer Byrd” in Other Property Rights Abuses: Private Property. Accessible at: <https://ij.org/client/spencer-byrd/>

<sup>5</sup> Haller, A. (2019). Legislative Reform or Legalized Theft: Why Civil Asset Forfeiture Must Be Outlawed in Ohio. *Cleveland State University Law Review* 67(2), 295. Accessible at <https://engagedscholarship.csuohio.edu/clevstlrev/vol67/iss2/9/>; Chigbrow, J. (2021). Police or Pirates? Reforming Washington’s Civil Asset Forfeiture System. *University of Washington Law Review* 96(3), 1147. Accessible at

<https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=5186&context=wlr>; Weaver, E. (2022). Money Doesn’t Grow on Trees: Civil Asset Forfeiture Reform is a Necessary Precursor to Police Reform. *Missouri Law Review*, 87(1), 14.

<sup>6</sup> Jensen, E. & Gerber, J. (1996). The Civil Forfeiture of Assets and the War On Drugs: Expanding Criminal Sanctions While Reducing Due Process Protections. *Crime & Delinquency*, 42(3), 421-434.



Comprehensive Drug Abuse and Control Act of 1970 and the Organized Crime Control Act of 1970 used CAF as a way to discourage drug selling and organized crime.<sup>7</sup> Initially, civil forfeiture was limited in scope and constrained to drugs, drug manufacturing equipment, and vehicles used to transport drugs. The laws continued to expand over the years to include proceeds from money-laundering,<sup>8</sup> proceeds of counterfeiting<sup>9</sup> and proceeds of motor vehicle theft.<sup>10</sup>

The expansion of CAF laws on the federal level paved the way for police departments across the country to profit from CAF. According to the Institute for Justice, between 2000 and 2018, “states and the federal government forfeited a combined total of at least \$68.8 billion. And because not all states provided full data, this figure drastically underestimates forfeiture’s true scope.”<sup>11</sup>

While CAF is supported by many members of law enforcement and “tough on crime” proponents, civil asset forfeiture disproportionately harms low-income communities and people of color, violating people’s right to due process and creating a financial incentive for police departments to seize civilians’ assets.<sup>12</sup> Furthermore, CAF is proven to be largely ineffective in helping police solve crimes or reduce illicit activity. This is evidenced by the fact that the average value of forfeited items across states tend to be small.<sup>13</sup> In 2000, the Civil Asset Forfeiture Reform Act (CAFRA) significantly reformed CAF at the federal level. The effort “shift[ed] the burden of proof in federal forfeiture proceedings from the property owner to the state, eliminate[ed] the cost bond requirement, provide[ed] for reasonable attorney’s fees for property owners who prevail in forfeiture proceedings, and create[ed] a uniform innocent owner defense for all federal forfeiture proceedings.”<sup>14</sup> However, CAFRA only applies to *federal* cases,<sup>15</sup> and many states – including Illinois – have not adopted the reform.<sup>16</sup>

## FORFEITURE AT HOME

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The laws and rhetoric around civil asset forfeiture in Chicago, Cook County, and throughout Illinois remain problematic. CAF made local headlines in 2021 when Mayor Lori Lightfoot attempted to pass an ordinance that would allow the city to utilize the civil asset forfeiture process to sue alleged “gang members” and seize their assets.<sup>17</sup> The Mayor’s proposed “Victims’ Justice Ordinance” would have allowed judges and other court officers to seize “any property that is directly or indirectly used or intended for use in any

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<sup>7</sup> *Id.*

<sup>8</sup> H.R.5484 - 99th Congress (1985-1986): Anti-Drug Abuse Act of 1986. (1986, October 27). <https://www.congress.gov/bill/99th-congress/house-bill/5484>

<sup>9</sup> Hyde, H. J. (1995). *Forfeiting Our Property Rights: Is Your Property Safe from Seizure?* Cato Institute: Washington, D.C. ISBN: 1-882577.

<sup>10</sup> *Id.*

<sup>11</sup> Knepper L., McDonald J., Sanchez K. & Smith Pohl, E. (2020). Policing for Profit: The Abuse of Civil Asset Forfeiture [3rd Ed.]. *Institute for Justice*. Accessed at: <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf>

<sup>12</sup> The Leadership Conference. (2015). Why Civil Asset Forfeiture is Legalized Theft [Fact Sheet]. Accessible at: <http://civilrightsdocs.info/pdf/criminal-justice/Civil-Asset-Forfeiture-Fact-Sheet.pdf>

<sup>13</sup> Kelly, B. (2021). Does Forfeiture Work? Evidence from the States. *Institute for Justice*. Accessible at: <https://ij.org/report/does-forfeiture-work/>

<sup>14</sup> *Supra* note 2.

<sup>15</sup> *Id.*

<sup>16</sup> At the time of publication, New Mexico and Maine are the only two states that have abolished civil asset forfeiture. For more information, see: New Mexico Legislature: “Forfeiture Procedures & Reporting” (NM HB560). (2015). Accessed at: <https://www.nmlegis.gov/Legislation/Legislation?chamber=H&legtype=B&legno=560&year=15>

<sup>17</sup> Chicago Sun-Times Editorial Board. (2021). “Mayor Lightfoot’s Plan to Use Asset Forfeiture to Curb Violence Looks Like an Empty Move.” *Chicago Sun-Times*. Accessible at: <https://chicago.suntimes.com/2021/9/15/22673051/assets-forfeiture-seizure-mayor-lori-lightfoot-chicago-gangs-editorial>

manner to facilitate street gang-related activity.”<sup>18</sup> In addition, the court would be able to impose a fee of up to \$10,000 in damages. The bill received substantial pushback<sup>19</sup> and the ordinance stalled.

Despite making strides to improve CAF law, civil forfeiture in Illinois continues to be problematic. In 2020, the Institute for Justice noted that police in Illinois have a significant incentive to seize the assets of residents<sup>20</sup> in order to fund themselves, because the state allows 90% of proceeds from assets seized to go to jurisdictions’ local law enforcement. As a result, police departments have a strong incentive to use CAF in order to fund themselves.<sup>21</sup> The U.S. Department of Justice (DOJ), which is involved in seizures and forfeitures in Illinois through its equitable sharing program, “allows state and local law enforcement agencies to partner with the federal government to seize and forfeit property under federal law—and receive up to 80% of the proceeds.”<sup>22</sup> Illinois takes advantage of this program, doing the 11th most equitable sharing in the nation.<sup>23</sup>

Nonetheless, Illinois has made some strides to improve the laws around civil forfeiture. Illinois House Bill 303<sup>24</sup> (signed in 2018 and now incorporated into law as 725 ILCS 150) updated Illinois’ CAF law in the following ways:

1. Shifted the burden of proof to the *government*, which must now prove someone’s guilt, from the *property owner*, who previously had the burden of proving their *innocence*. The government’s burden of proof was also heightened from probable cause to the preponderance of evidence.
2. Created an expedited process for innocent owners.
3. Repealed the requirement that property owners must pay a “cost bond” equal to 10% of the value of the seized property before their case could be heard by a judge.
4. Ensured small sums of cash were no longer subject to CAF and that the mere possession of a miniscule amount of drugs would no longer serve as a legal basis for forfeiture.
5. Added a data collection requirement for the Illinois State Police (ISP) to report the number and value of assets seized by CAF in each county and jurisdiction in Illinois on a yearly basis.

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<sup>18</sup> City of Chicago Office of the City Clerk. (2021). SO2021-4130. Accessible at: <https://chicago.legistar.com/LegislationDetail.aspx?ID=5136533&GUID=975E0666-F4B6-446D-BA12-E31AF5079D9E&Options=Advanced&Search=>

<sup>19</sup> Fry, P. & Pratt, G. (2022). “More Than 50 Attorneys Sign Letter to Lightfoot Urging Her to Abandon New Ordinance Targeting Gang Members.” *Chicago Tribune*. Accessible at: <https://www.chicagotribune.com/news/breaking/ct-victims-justice-ordinance-letter-lawyers-20220119-kewkblqrfeexpurasv4w4w4uq-story.html>; Agnew, S., (2021). “Chicago City Council Must Vote NO on the Mayor’s Proposed Civil Asset Forfeiture Ordinance (O2021-4130).” Chicago Appleseed Center for Fair Courts. Accessible at: <https://www.chicagoappleseed.org/2021/11/02/vote-no-o2021-4130/>

<sup>20</sup> *Supra* note 11.

<sup>21</sup> *Id.*

<sup>22</sup> According to Knepper et al. (2020), from 2000 to 2019, at least 84% of U.S. DOJ’s forfeited properties were processed under civil, not criminal, forfeiture laws.

<sup>23</sup> *Supra* note 11.

<sup>24</sup> Illinois General Assembly. Drug Asset Forfeiture Procedure Act (725 ILCS 150/). Accessible at: <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1977&ChapterID=54>



## PROJECT OVERVIEW

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Chicago Appleseed Center for Fair Courts and the Chicago Council of Lawyers have been working with partner organizations to improve CAF data collection and public education. This effort includes gathering court-watching data to better understand how CAF is used in Illinois and how it impacts the lives of individual property owners and communities. Previous state-level reforms have been ineffective in limiting the practice and providing the public with necessary data around its use.

**In order to better understand the CAF process and how it impacts the lives of individual property owners and communities, our court-watching<sup>25</sup> team observed 230 civil asset forfeiture cases in Cook County between March and August of 2022. We reviewed<sup>26</sup> the data collected by the court-watchers and have summarized our insights in this report.**

A total of 17 volunteer court-watchers from various backgrounds observed 230 civil asset forfeiture calls in the County Division of the Circuit Court of Cook County. Court-watchers noted a number of stakeholder concerns around innocent owners, support for self-represented property owners, procedural efficiency, and more, and brought up concerns of their own. Although the court-watching data is based on volunteers' individual and subjective perceptions, this information is relevant in that it both helps contextualize other data and helps approximate how outside observers (i.e., "the public") perceive court actors (i.e., prosecutors, judges, probation officers), as well as the kinds of requests and decisions they make.

## INSIDE COOK COUNTY'S CIVIL FORFEITURE COURTS

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Civil asset forfeiture is the process by which law enforcement seizes and keeps or sells any property they allege is involved in unlawful activity. It is in the civil asset forfeiture courtrooms – composed of a judge, the judge's staff, an Assistant State's Attorney, and property owners – that property owners must go through the process of reclaiming their asset(s).

## DEFINING OWNERSHIP

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One of the most obviously unfair aspects of the civil asset forfeiture process relate to the issues of ownership. The fact is, the actual owner of seized property may not be the person who was alleged to have participated in unlawful activity with the property in question, but they are the one who must answer the summons to appear in court for the initial hearing.

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<sup>25</sup> See <https://www.chicagoappleseed.org/court-watching/>

<sup>26</sup> See Appendix 2 for a breakdown of the research methodology used for this project.

Our court-watchers observed a mosaic of property owners during civil asset forfeiture maintenance calls, including: “innocent owners,” lienholders, third-party property owners, and joint owners. Of these, the *innocent owner* in particular deserves mention. An innocent owner is someone who owns the property that was allegedly used by the individual accused of committing unlawful activity, *but who themselves did not participate in the alleged unlawful activity*. In other words, “innocent” owners may be the parent, grandparent, friend, or neighbor of the individual who is alleged to have committed unlawful activity with the seized asset. In such cases, the “innocent” owner may not even know what has allegedly occurred with their property, adding confusion to an already convoluted and daunting process.

## LIFE OF A CIVIL ASSET FORFEITURE CASE

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The life of a CAF case from start to finish is not an easy one to follow for property owners. After the police seize the property, the court has 14 days to decide if there was probable cause and 45 days to tell the property owner that their property is being kept. A typical CAF case consists of two parts: (1) the criminal case, if there is one (heard in a different courtroom), and (2) the civil asset forfeiture case itself. The CAF judge will not schedule a trial until after the criminal case is over. Notably, if the criminal charges are dropped or the accused person is found not guilty, that does not stop or change the forfeiture process. The standard of proof needed for keeping the property owner’s property (i.e., preponderance of the evidence) is lower than the standard of proof needed to find someone guilty of unlawful activity (i.e., beyond a reasonable doubt). In other words, a person’s criminal case can be dropped, and their property still be seized as long as the search was considered justified by probable cause.

If a person is not aware of their criminal case, however, they can tell the CAF judge that they don't plan on contesting the allegations regarding the criminal case. This means a person can admit that an unlawful violation occurred but did not know about it. In this case, a CAF judge may set the case for a trial immediately. The criminal case will be finished after the accused person is released because the charges were dropped; pleads or is found guilty; or is found not guilty. However, the State's Attorney can ask that the property be returned to the accused person if they are found to be not guilty or the charges are dropped.

After the police seize a person’s property, the typical civil asset forfeiture case progresses as follows:

- 1. Preliminary Review:** Within 14 days, the court must decide if there was probable cause for the property to be seized.
- 2. Wait for Notice (Summons + Complaint):** If the court decides there is probable cause for the property to be kept, it will inform the property owner via a two-part notice (Summons and Complaint) within 45 days letting them know that the police and State think they are allowed to keep their property.
  - It is advised that the property owner talks to a lawyer at this stage. If a property owner has a legal reason to challenge the way they received the Summons and Complaint (service of process), or a legal reason to have the Complaint dismissed, the property owner needs to

file a motion with these reasons before filing their Answer.<sup>27</sup>

3. **Respond to Notice (Appearance + Answer):** If the property owner wants their property back, they will need to complete the steps listed within the time frames given in the Summons and Complaint, which will tell the property owner to do two things: First, file an Appearance and an Answer to the Complaint and then appear in court. Both of these must be done within the time frames specified in the Summons and Complaint.
  - The purpose of the Appearance is to tell the court and the other parties that they are participating in the court case. It also tells the court whether they want their case decided by a judge or a judge and jury. The property owner does not have a right to a jury trial in every case.
  - The purpose of the Answer is to tell the judge what they want them to do and includes any reasons why the judge should grant the property owner's request. For example, the property owner could argue that they didn't know about or help the alleged unlawful activity.
4. **Trial:** The trial is typically held within 60 days of the property owner filing their response (Appearance + Answer) unless the court has good cause<sup>28</sup> to postpone the trial hearing. At the trial, the State will argue first and try to prove probable cause that the property should be forfeited. The property owner or their attorney will argue second and try to prove by a preponderance of the evidence that their property shouldn't be forfeited, because even though there's a *chance* it was used in allegedly unlawful activity, they didn't know about or help the activity. However, the burden to prove is primarily on the State – not the property owner.
  - If the judge sets the case for trial and the police officer is not there on the day of the hearing, the judge will continue or reschedule the case for one more date. This is a Continuance. If the police officer is not present on the second day scheduled, the judge will dismiss the case and return their property to the property owner.
5. **Settling:** In any civil case, the property owner has the option to settle. This means the property owner can reach an agreement with the State's Attorney and put that agreement in writing. For example, the property owner can agree to pay a certain amount for the return of their property. Settling might mean getting the property back sooner but could also cause an "innocent owner" to pay a fine for something they didn't do.

## FINDINGS FROM COURT-WATCHING

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Chicago Appleseed worked with a data specialist to see what, if any, themes emerged from the 230 court-watching observations. After carefully parsing through this data, we were able to extract at least seven major recurring themes.

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<sup>27</sup> See 735 ILCS 5/2-301; 735 ILCS 5/2-615. Blank motion forms can be found at [illinoiscourts.gov/Forms/approved](https://illinoiscourts.gov/Forms/approved)

<sup>28</sup> Illinois Legal Aid Online. (n.d.). Glossary. Accessible at: [https://www.illinoislegalaid.org/lexicon/glossary#Good\\_cause](https://www.illinoislegalaid.org/lexicon/glossary#Good_cause)

# 1. Civil asset forfeiture has a disproportionate impact on Cook County’s low-income communities of color.

**One piece of data collected by court-watchers was demographic information, which showed that CAF has a disproportionate impact on low-income people of color in Chicago.** Out of property owners whose race was identified, 47% were Black (77 of 163) and 36% were Hispanic or Latine (58 of 163). Out of property owners whose gender was identified, over two thirds (68%) of property owners were male (126 of 186).<sup>29</sup> The majority of seized properties were owned by one individual (75.7%) and 6.5% were jointly owned (17.8% of cases court-watchers were unable to identify); 87.4% were first party claims, 5.7% were third party claims, and 7.0% were not identified by court-watchers.

Although this report was unable to collect information on court participants' income level, previous reports have found that the majority of CAF occur in Chicago’s low-income neighborhoods.<sup>30</sup> In addition, Black and Latine Chicagoans are more likely to be low-income than White Chicagoans.<sup>31</sup> The majority of CAF cases that our court-watchers observed involved relatively-low value items, and yet, the people attending CAF court calls choose to attend court in an attempt to get their property back—demonstrating that while these items may be relatively low in value, they were an important asset to property owners. For example, the majority of cases observed (82.1%) involved vehicles, which play an important role in people’s daily lives. Our court-watching demonstrates a need for further qualitative research into how the cost of CAF proceedings impacts low-income people of color.

TABLE 1:  
**TOP 5 REASONS FOR PROPERTY SEIZURE**

REASON FOR SEIZURE	CASE COUNT (96)	% OF CASES
1. <b>Drug Possession</b>	49	51%
2. <b>Driving Without a License</b>	21	21.9%
3. <b>Aggravated Fleeing or Eluding</b>	12	12.5%
4. <b>Driving Under the Influence</b>	9	9.4%
5. <b>Violence</b> (attempted murder, firing a gun, etc.)	5	5.2%

The data in Table 1 was collected through court-watching in Cook County’s Civil Asset Forfeiture courtrooms from March to August 2022 by Chicago Appleseed.

<sup>29</sup> Please note that the demographic information included here is based solely off of court-watchers' subjective assessments.

<sup>30</sup> Ciaramella, C. (2017). "Poor Neighborhoods Hit Hardest by Asset Forfeiture in Chicago, Data Shows." *Reason*. Accessed at: <https://reason.com/2017/06/13/poor-neighborhoods-hit-hardest-by-asset/>

<sup>31</sup> Marksjarvis, G. (2017). "Chicago’s Racial Wealth Gap Far Worse Than U.S. Average, Report Finds." *Chicago Tribune*. Accessible at <https://www.chicagotribune.com/business/ct-chicago-racial-wealth-divide-0131-20170130-story.html>

## 2. The vast majority of civil asset forfeiture cases observed by court-watchers involved allegations of nonviolent crime.

**By and large, cases observed in the civil asset forfeiture courts were nonviolent crimes.** Although court-watchers were only able to identify the reason for asset seizure in about half of cases (47.8%, 96 of 201), a clear pattern emerged. The most common reasons for seizure of assets were drug possession (51.0%), driving without a license (21.9%), and aggravated fleeing or eluding (12.5%). Our court-watching found that these reasons were usually established when a police officer pulled over a vehicle—over 90% of cases where the property was identified involved a vehicle being seized.

## 3. Generally, seized assets were relatively low in value, with vehicles representing the majority of cases.

**Vehicles were the most frequently seized asset in the cases observed, accounting for 82% (165 of 201) of cases; cash represented 13.4% (27 of 201) of seized assets observed by court-watchers.** However, this number does not represent the overall trend within Illinois: In Illinois, a whopping 76% of civil asset forfeiture is in the form of currency, and only 14% vehicles.<sup>32</sup>

TABLE 2:  
**TYPES OF ASSETS SEIZED**

ASSET(S)* SEIZED	CASE COUNT (201)	% OF CASES
Vehicle	165	82.1%
Cash	27	13.4%
Drugs	6	3%
Real Estate	2	1%
Weapons	1	0.5%

\* **Note: One case could have more than one kind of property seized.**

Data in Table 2 was collected through court-watching in Cook County's Civil Asset Forfeiture courtrooms from March to August 2022 by Chicago Appleseed.

We also reviewed the Chicago Police Department (CPD) asset forfeiture reports<sup>33</sup> for the number and value of assets seized in order to compare our court-watching findings and overall Illinois asset forfeiture data.

<sup>32</sup> *Supra* note 11.

<sup>33</sup> See Illinois State Police, Office of Finance: Asset Seizure and Forfeiture Reports for 2020 (2019 data), 2021 (2020 data), and 2022 (2021 data), accessible at <https://isp.illinois.gov/Finance/AssetSeizure>

CPD makes the most seizures in the State of Illinois,<sup>34</sup> and it appears that Chicago Police may differ from other law enforcement agencies in Illinois which largely seize currency. In 2021, 39.8% of assets seized by CPD were vehicles and 60.2% of the total value of assets seized was currency. Although vehicles were seized less frequently by CPD than currency, they carried a higher value, representing 62.5% of the total value of assets seized by CPD in 2021.

The overrepresentation of vehicle owners in Cook County civil asset forfeiture courts may indicate that people who had vehicles seized were highly motivated to go to court. Vehicles not only represent a significant investment, but a critical way for people to travel—especially for disabled people and residents of low-income neighborhoods—given our nation’s lack of investment in public transportation. Relatively low amounts of cash, on the other hand, may not have compelled people to appear in court to recuperate it, even if it has a significant impact on their finances, because of the investment of time and money in fighting the CAF court case. More, and better, data collection about the life of a CAF case could help to discover if this hypothesis about the data discrepancies observed here are correct.

One court-watcher underscored the impact of not being able to access cars on court participants' lives, recording the story of an elderly person whose car was seized. It was unclear to the court-watcher if the

**TABLE 3:  
ASSETS SEIZED BY  
CHICAGO POLICE IN 2021**

<b>CURRENCY</b> 37.5% of the Total Value of All Seizures by CPD in 2021	
Number of Currency Seizures	1,020
Percentage Currency of All Assets Seized	60.2%
Value of Currency Seized	\$3,068,436.00
<b>CONVEYANCES (VEHICLES)</b> 62.5% of the Total Value of All Seizures by CPD in 2021	
Number of Conveyance Seizures	674
Percentage Conveyances of All Assets Seized	39.8%
Value of Conveyances Seized	\$5,123,943.00
<b>Total Number of Assets Seized</b>	<b>1,694</b>
<b>Total Value of Assets Seized</b>	<b>\$8,192,379.00</b>

*Data in Table 3 comes from the Illinois State Police's 2022 Asset Seizure and Forfeiture Report (2021 Data) about the Chicago Police Department, which can be accessed at <https://isp.illinois.gov/Finance/AssetSeizure>.*

<sup>34</sup> Illinois State Police. (2022). Asset Seizure and Forfeiture Report (2021 Data). Accessible at [https://isp.illinois.gov/StaticFiles/docs/AssetSeizure/2022/Illinois%20Seizure%20and%20Awarded%20Assets%20Annual%20Report%202022\\_Part%201.pdf](https://isp.illinois.gov/StaticFiles/docs/AssetSeizure/2022/Illinois%20Seizure%20and%20Awarded%20Assets%20Annual%20Report%202022_Part%201.pdf)

person was involved in any criminal activity. The court-watcher noted:

*It was clear she needed the car ASAP as she was having difficulty taking the CTA for work. Property owner stated she had a health condition. She was going to say more, but ASA interrupted and [the] judge turned attention to ASA.*

Another court-watcher stated that a property owner “said that the seizure of his car caused him to lose his job and become 2 months behind on rent.” Another court-watcher noted a systemic lack of care for the impact that car seizures have on people:

*The [property owner] said, “my wife can’t work without a car,” [and] the judge replied, “that’s not what we’re here for, getting the car back depends on the criminal case.” The husband accepted [the settlement] and the case was completed.”*

Our court-watching found that the overall median value of property seized was \$7,050. The median value of vehicles seized was \$10,790 and the median value of cash seized was \$3,500. However, the number of cases in which court-watchers were able to identify the value of assets were low (32), perhaps skewing our results.<sup>35</sup> According to the Institute for Justice, between 2015 and 2019 the median value of assets seized in Illinois was \$755.<sup>36</sup>

#### **4. The civil asset forfeiture process is confusing and difficult for property owners to navigate.**

**The typical property owner lacks knowledge about the process and has trouble knowing what to do when they receive communication from the court.** Our court-watchers found that property owners often seemed confused about the CAF court process. From knowing their case number, properly filling out paperwork, and completing a Hardship Motion, property owners struggled to successfully navigate the CAF process. Judges were found to be impartial, if varying levels of helpful to property owners, but the system itself created confusion for property owners.

Property owners’ confusion is not the fault of their own, but the fault of a system that is built to extract money from citizens and discourage people from recuperating their assets. The issues with CAF courts are structural in nature and pervade every aspect of the system. Property owners did not receive the guidance they needed to successfully navigate CAF court. Our court-watching found that many property owners did not understand the CAF court process, including financial aid opportunities for low-income property owners such as Hardship Motions and fee waivers.

#### **Importance of Legal Counsel**

The majority of civil asset forfeiture property owners must represent themselves and navigate the complex world of legal proceedings on their own. Court-watchers identified that 69% of property owners did not

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<sup>35</sup> Court-watchers were only able to record the value of 26 vehicles and 8 monetary amounts (cash) forfeited. Therefore, these numbers may not be representative of the values of assets seized in all of the cases reviewed in this report.

<sup>36</sup> *Supra* note 11.



have an attorney. Of those that did have an attorney, only 24% had hired a private attorney.

It is important to consider that among property owners that have an attorney at their initial appearance, not all may be able to afford legal representation throughout the full duration of their case. Attending CAF court can be a lengthy process. Although our court-watchers were unable to ascertain how long individual property owners spent in court, there is evidence that these cases can drag on. In 2009, the U.S. Supreme Court noted in *Alvarez v. Smith* that “property owners in Illinois could be forced to wait up to 142 days before forfeiture proceedings beg[i]n.”<sup>37</sup> The six plaintiffs in the lawsuit “waited between 11 and 40 months for their cases to be resolved.”<sup>38</sup> Relatedly, attending CAF court can be costly for property owners, especially for those that choose to hire a lawyer. CAF court is always during the workday (court begins around 1:30 PM), therefore, it represents not only a loss of time but a possible loss of income.

TABLE 4:  
**LEGAL REPRESENTATION OF OWNERS**

Did the property owner have an attorney present?	CASE COUNT (230)	% OF CASES
No	155	67%
Yes - Private Attorney	56	24%
Not Sure	10	4%
Yes - Pro Bono or Legal Aid	9	4%

Data in Table 5 was collected by court-watchers in Cook County's Civil Asset Forfeiture courtrooms from March to August 2022 by Chicago Appleseed.

A self-represented property owner rarely understands the rule of law, and rarer still, can they sufficiently plead their case in an adversarial proceeding against the State’s Attorney, who is a trained legal professional. Of course, a self-represented property owner may sufficiently navigate their civil asset forfeiture case with the help of resources, but for many property owners, the judge – who operates under specific restrictions around delivering legal advice – is often their sole instructor on procedural matters.

Compounding the issue, court-watchers observed that judges sometimes gave out incorrect information, and that various legal and financial options available to property owners in CAF courts were only occasionally mentioned. Again, the self-represented property owner may sufficiently navigate their case with the help of resources. However, the self-help resources that judges may give to property owners do not include enough information about legal aid and pro bono help in Cook County and Illinois as a whole. Considering the odds they are up against, the CAF property owner may feel pressured to settle, even if they

<sup>37</sup> Handley, J., Helsby, J. & Martinez, F., (2016). “Inside The Chicago Police Department’s Secret Budget.” *Chicago Reader*. Accessed at: <https://chicagoreader.com/news-politics/inside-the-chicago-police-departments-secret-budget/>

<sup>38</sup> *Id.*

have a strong case against the state.

## Confused Unrepresented Litigants

Relatedly, about 1-in-5 reports indicated that the property owner did not understand the legal processes behind civil asset forfeiture. In other words, property owners were deeply confused about the process. It was typical for court-watchers to see property owners coming into court without any understanding of next steps, what petitions they needed to file, or how to file them. In one case, a property owner failed to correctly file the required documents twice, and as a result his case was not heard. More often, property owners would come in not knowing why they were in court if someone else committed the crime, why they could not get their property back if their criminal case was already settled, or why their property was seized at all. Even when cases were dismissed, some property owners did not understand what that meant, nor how to get their property back.

TABLE 5:  
**PERCEPTION OF OWNERS' UNDERSTANDING**

Did the property owner seem to understand the court process?	CASE COUNT (230)	% OF CASES
Yes	106	46.1%
Not Sure	77	33.5%
No	44	19.1%
Somewhat	3	1.3%

Data in Table 5 was collected by court-watchers in Cook County's Civil Asset Forfeiture courtrooms from March to August 2022 by Chicago Appleseed. This table was updated on June 22, 2023. A previous version of the table listed the percentages in the "% of Cases" column in an incorrect order.

One court-watcher described the property owner's confusion, saying: "The property owner did not appear to understand any part of the process (like most of the property owners during the call). Judge repeated explanation of the CAF process." Another court-watcher noted:

*As soon as it was the property owner's turn to speak, the property owner said, "I really don't know what to file. I just logged in." The judge reassured her and said she made the right decision in logging into the courtroom, because she could now be helped by the court. The judge then took her through the steps of reclaiming her vehicle.*

Many court-watchers reported that property owners were generally confused about the next steps in the process—what stage their case was at, who to contact, or what to file next. A few specifically mentioned that the property owner did not know what to include in a Hardship Motion, or how to provide evidence that their hardship outweighed the interest of the state. One court-watcher described a property owner that

“seemed confused about the hearing process and motions that could be raised to get his vehicle back temporarily, such as filing for a fee waiver or hardship.”

Because the majority of property owners in CAF courts do not have a lawyer representing them, property owners often relied on the judge to guide them through the process. Even property owners with lawyers had trouble navigating this process demonstrating how objectively confusing this process is. Judges were often unable to provide clarity about the process and it was clear that there was a need for property owners to understand the reasons why their asset had been seized, the process for getting the asset back if at all, what paperwork was necessary to file and how they should file it, and the resources that they were entitled to.

Blame, however, cannot be placed on judges who were often attempting to fill in the vacant role of legal counsel. The majority of people in CAF court are unable to afford a private attorney and because CAF is a civil process they are not afforded court-appointed counsel. Court-watchers found that judges often tried to provide clarity on the process to property owners but that it was not enough for property owners to fully understand the process: property owners needed much more support that can only be provided by legal counsel.

Court-watchers found that judges were often not particularly effective at explaining the process or giving participants next steps. Participants without representation seemed to fare worse:

*[The judge] set their trial date and told them (via an interpreter) to bring any witnesses to that hearing. He also told them a deadline for filing "documents," but didn't clarify which documents would be required. It was clear that neither of them had a lawyer, and although they nodded when he asked them if they understood (sometimes multiple times for the same question), they were clearly lost.*

In one case, the judge may even have led to further confusion for the court participant by giving them out-of-date or incorrect information:

*The Judge then directed him to "IllinoisSupremeCourt.com," which is an invalid URL. When the property owner asked the judge to put the info in the chat, the judge said, "No, I do not have time to put it in the chat – go to...the website and there are instructions there for how to fill out the forms and what you must show."*

Lack of understanding of court processes unnecessarily delays the asset retrieval process for individuals. It was very common for our court-watchers to see continuances ranging from a few weeks to months for property owners to file or re-file paperwork.

## Innocent Owner Defenses

Innocent owners seemed to be particularly confused about the process. Innocent owners were largely parents, partners, or friends of people facing criminal charges. In the second version of the court-watchers questionnaire, we asked explicitly if the innocent owner defense was mentioned: Court-watchers reported that “innocent owner” was mentioned in only 1 out of 20 cases.

However, we did ask all court-watchers if the property owner understood what constituted an “innocent owner,” and some court-watchers mentioned “innocent owner” in their overall narrative. Overall, there were 15 mentions of innocent owners out of 230 court-watchers. On several occasions where it was clear an innocent owner defense was viable, judges and State’s Attorneys the state provided referrals to the supervisor of the CAF division at the Cook County State Attorney’s Office (CCSAO), who could give clients more information and guidance about how to get in touch with an attorney in a pro bono program specializing in this defense. However, this referral was not consistent and varied among judges and State’s Attorneys.

On several occasions, court-watchers noted that property owners were unaware of the “innocent owner” defense. One court-watcher stated: “The property owner did not understand what constitutes an innocent owner and how to prove his ownership of the vehicle.” In another case, a court-watcher noted: “The son was trying to assert a claim on his mother's car, and the mother didn't seem to know about the innocent owner defense until the State's Attorney said they wanted to talk about it with her.”

## 5. Financial aid opportunities for property owners seem to be underutilized.

**Property owners' ability to afford court proceedings is an important consideration for civil asset forfeiture courts.** At least 7% (16 of 230) of reports indicated some level of issues with affording court fees or fines (i.e., the property owner was burdened by costs in having their case heard). However, 34.8% (80 of 230) of court-watchers’ reports noted that they were not sure if the case included fees or fines, so the true number is likely higher, since these difficulties are harder to directly observe. Regardless, previous reports have found that the majority of CAF occur in Chicago’s low-income neighborhoods.<sup>39</sup>

### Fee Waivers + Hardship Motions

There are fees associated with many steps of the asset retrieval process. For example, all property owners must initially file a Notice of Appearance, and there is a mandatory fee to file the Notice. If the participant cannot pay this fee, they may ask the Cook County Clerk for a fee waiver application and submit this to the court. The judge then decides whether the fee will be waived or reduced. Only 2.6% (6 of 230) of cases observed by court-watchers mentioned that the property owner filed a fee waiver. This aligned with our expectations, because fee waivers are rarely discussed during court proceedings, especially after a preliminary hearing. Furthermore, there were again high rates of court-watchers who were unsure if the property owner did or did not file a waiver.

Court-watchers reported the following reasons as to why property owners did not file fee waivers:

1. The property owner did not know about the option of fee waivers;
2. The property owner had not filed yet, but had planned to file in the future;
3. A fee waiver was not yet necessary or applicable to the case; and
4. There was no electronic option to file a fee waiver.

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<sup>39</sup> *Supra* note 30.

Additionally, one court-watcher reported that a property owner's fee waiver was denied due to having a private attorney. The fee-waiver process seemed to confuse property-owners, with one court-watcher reporting confusion among property-owners about the role of a fee waiver.

Likewise, a property owner has the option to file a Hardship Motion, also called a Hardship Exception, to get their vehicle back temporarily after it has been taken by law enforcement. The property owner must show that they have a "substantial hardship" – for example, that they are unable to get to work, obtain childcare, or see the doctor without their vehicle. In order to request the Hardship Motion, property owners are required to include sworn, notarized affidavits. This means that property owners are required to write down the reasons why not having the car will pose a substantial hardship and then get that document notarized.

Hardship Motions were rarely observed and even more rarely granted. Only 8.7% (20 of 230) of court-watchers confirmed that a Hardship Motion was filed, and only two of those (20%) were granted. The top reasons court-watchers noted that Hardship Motions were not granted include:

1. The motion was filed improperly (not substantive enough, filed too close to court date, no notice sent to lienholder, etc.);
2. The property owner did not have claim, due to reasons outside of the hardship (e.g., vehicle was totaled anyway, property owner does not have driver's license);
3. Hardship was not determined to outweigh interest of the State; and
4. Because of administrative issues.

One court-watcher noted that it seemed that a court participant could have benefited from a Hardship Motion but that it was never brought up to them as an option. Yet another court-watcher reported that one property owner stated that they were now aware of their option to file a Hardship Motion because the judge advised them to call the legal help hotline.

## Financial Aid Concerns

A review of court-watching data made several concerns apparent for property owners that needed financial aid opportunities:

- **Property owners faced a high burden of proof of hardship.** In one case, even though the property owner explained that he was using rental cars and Ubers, which he could not afford, to get to work and had already lost one job due to his inability to get to work, he was not granted a hardship exception. In another case, the judge denied the Hardship Motion because the property owner did not state why these hardships outweighed the State's interest. And for a third litigant, a Hardship Motion was denied because they only proved that being without a vehicle was a nuisance rather than a significant hardship.
- **Many property owners did not seem aware of their options to file a Hardship Motion, or how to**

**properly file one.** From one court-watcher:

*There was little understanding of what steps people had to take to receive their property back...some hardship exceptions were granted but weren't asked for by most. Property owners confused hardship exceptions with getting their property back permanently.*

- **Administrative issues called into question the filing process for hardship documents.** During one hearing, a judge was substituting for another judge that kept documents only in hard copy form. A longstanding CAF litigant came before the substituting judge alleging that she had filed multiple Hardship Motions over the last year or so. However, the lack of electronic copies made it difficult for judicial staff and the State's Attorney to locate these filings. After some time, the State's Attorney discovered that the motions were indeed filed on the alleged dates, but the judge had to reschedule the hearing due to a lack of case information among other things.

Other concerns related to financial aid also arose. In one case, the court-watcher wrote that after the property owner had submitted two Hardship Motions:

*[The] judge explain[ed] to [the] property owner what is substantively needed from a Hardship Motion, but [did] not ask [the] property owner to resubmit because it would be a waste of the property owner's time.*

TABLE 6:

## CASE RESOLUTIONS

Was the civil asset forfeiture court case settled or resolved?	CASE COUNT (230)	% OF CASES
No	191	83%
Yes	36	15.6%
Not Sure	3	1.3%

Data in Table 6 was collected by court-watchers in Cook County's Civil Asset Forfeiture courtrooms from March to August 2022 by Chicago Appleseed.

## 6. Cook County's civil asset forfeiture court is an inefficient system that ensnares court participants in legal proceedings.

**Because court-watchers primarily observed cases in the case maintenance stage rather than the trial stage, the vast majority of court-watchers (83%) reported that the case they were watching was not resolved.** However, many cases in the maintenance stage resulted in continuances – sometimes of multiple months – either because the property owner's criminal case was still ongoing or because the property owner needed more time to file or re-file paperwork. There were also a few reports of trials being

postponed due to police witnesses not being present. Based on court-watcher narratives, it appears that many of these cases were a chance to check in and provide next steps, rather than provide a definitive outcome.

## Case Resolutions

Out of the 36 cases that were resolved during our observations, 23 (63%) resulted in the property owner getting their property back (either the case was dismissed, the state declined to pursue, or the judge ruled in favor of the property owner), 5 resulted in rulings in favor of the state, and 2 resulted in settlements.

Within the hearings themselves, administrative and technical issues also led to inefficiencies: 21.7% of court-watchers reported administrative difficulties, with property owners not knowing their case number being the most common, and 11.7% indicated Zoom difficulties, such as the property owner not having their camera turned on, having audio issues, or not knowing how to access the chat.

## Administrative Difficulties

Administrative difficulties were reported in a significant number of cases: 21.7% (50 of 230) of reports indicated some level of administrative difficulty. The most common reason (19 occurrences) for these difficulties was that the property owner did not know their case number. Other difficulties included:

1. The property owner was not able to be found in the system because of miscommunication (or other issue) between the court and seizure entity;
2. There was a delay in getting an interpreter; or
3. The property owner filed incomplete or incorrect paperwork.

One court participant was confused about the process and was unable to be helped by court personnel:

*The property owner was given a piece of paper that had the Zoom information to discuss his car that was taken. However, he was not on the docket for this meeting. He also never received a case number. The clerk tried looking him up but never found anything. He said he was worried he was going to get a warrant for not appealing.*

Another court-watcher described a situation in which an attorney, who is likely to be savvier at navigating the legal system than property owners, was unable to file an appearance due to administrative difficulties:

*The attorney for the claimant...was unable to file an Appearance because the email address on the door of the Daley Center is apparently incorrect and no one was answering the phone. He went in person and couldn't find anyone [in the Clerk's Office], nor could anyone direct him toward the office dealing with CAF.*

## Zoom Difficulties

Administrative and technical issues also contributed to the issues of CAF courts. Seemingly simple issues, most frequently property owners not knowing their case number, stalled the CAF courts or caused property owners court appearances to be delayed. Other issues, such as Zoom difficulties, are seen across all court



calls and represent a larger issue of virtual court inefficiencies. In 11.7% (27 of 230) of court-watchers' reports, some level of Zoom difficulty was reported. The most common difficulties (11 occurrences) were related to audio issues; for example: the property owner was inaudible, had no microphone, or did not know how to unmute their microphone. Other difficulties resulted from:

1. Issues with the webcam (property owner did not have camera turned on or it was hard to see);
2. The property owner did not know how to access the chat function; or
3. Internet connection issues.

While remote hearings allow some participants the flexibility to not come into court, they are not without burdens.<sup>40</sup> Virtual court proceedings have the capacity to create inefficiency, especially when property owners are not given proper guidance in how to navigate the virtual courtroom.

## 7. Judicial behavior varied but was largely considered impartial.

**Court-watchers were also asked to consider judicial behavior in the three civil asset forfeiture courtrooms observed.** Judges' identities were anonymized because this report is meant to gather insights about general court functioning, not to evaluate the behaviors of individual judges. Of the three judges, one judge ("Judge X") was observed the most by court-watchers, representing over half of observations in this report (56.1%). "Judge Y" was also observed many times (39.1%). Due to difficulties accessing the virtual courtroom, the third CAF judge ("Judge Z") accounted for the fewest number of observations, representing only 4.8% of the total observations included in this report.

All judges were largely regarded as impartial. However, court-watchers noted a few administrative issues, potential due process issues, and examples of unclear communication.

TABLE 7:  
**NUMBER OF OBSERVATIONS BY JUDGE**

JUDGE	OBSERVATIONS	% OF CASES
Judge X	129	56.1%
Judge Y	90	39.1%
Judge Z	11	4.8%

Table 7 contains information about the breakdown of court-watching observations in each Cook County Civil Asset Forfeiture courtroom.

<sup>40</sup> Butler, K. (2023). "Regulating Remote Courts: Issues with Due Process, Technology, and How the Pretrial Fairness Act Helps." Chicago Appleseed Center for Fair Courts. Accessible at: <https://www.chicagoappleseed.org/2023/03/16/regulating-remote-courts/>

Court-watching data also demonstrated examples of judges being very proactive about providing resources to property owners via Zoom chat, including the service desk, pro bono assistance for innocent owner cases, information on how to file paperwork, etc. Alternatively, there were times when judges got frustrated with property owners' lack of understanding and cut people off or did not provide adequate explanations or resources. In some instances, court-watchers stated that judges did not leave enough space for interpreters to translate while others stated that judges were patient with translators.

Court-watchers also expressed some concerns about due process. Specifically, there were multiple incidents where a defendant was not at court, but probable cause was established. One court-watcher reported:

*The Judge heard the [property owner name redacted] case without him ever being present simply because the State brought it up and said that the facts were the same. It's not clear that the preliminary hearing for [property owner name redacted] was ever on the docket and I'm not sure that he had notice of the hearing before the Judge found probable cause.*

Court-watchers also reported that preference for paper copies of motions can become an issue when copies are lost or not available if the judge has a substitute. For example, one judge, while acting as a substitute for the usual judge, was unable to locate case information for one CAF property owner due to the information being solely available on paper, which was placed in an indiscernible location. Overall, there was not enough data to determine if judges ruled significantly differently on cases, since the vast majority of these cases were preliminary hearings.

## RECOMMENDATIONS

**Overall, our findings make clear that civil asset forfeiture is an unethical, flawed system that does not align with U.S. conceptions of property rights or due process and disproportionately impacts Illinois' most vulnerable residents.** Civil asset forfeiture does not serve communities by making them safer but serves police departments by making them richer. Our court-watching found that the majority of crimes that caused CAF are non-violent (85.4%). CAF is not being used as it was initially intended, to target large-scale gang and drug operations; today, CAF is used on some of Cook County's poorest residents, robbing them of the limited assets that they have.

While our observations take place in the Circuit Court of Cook County, we supplemented our court-watching with statewide data. Taken together, we are able to make recommendations for CAF in Illinois as a whole. In order to create a more just system, we offer several policy recommendations:

### 1. Illinois should eliminate civil asset forfeiture.

**Asset forfeiture is not being used as it was originally intended (to cripple large-scale organized crime) and has now become a means of taking assets largely from low-income people.** This drift from its original purpose has put many people across the state of Illinois in economic peril, as CAF can turn a legal

issue into an economic one. Sixteen states already require a conviction to forfeit almost all property, with North Carolina, New Mexico, Nebraska, and Maine abolishing civil asset forfeiture in its entirety,<sup>41</sup> and more states introducing and pushing legislation to follow suit.<sup>42</sup>

Elimination of CAF would not mean the end of *all* asset forfeiture, as it will continue to occur in criminal cases. While criminal asset forfeiture comes with its own set of issues, this process at least limits asset forfeiture to instances where there is conviction, which helps ensure that all property-owners receive proper due process and spares innocent owners. Criminal asset forfeiture proceedings also have the added benefit of ensuring legal representation for property owners who cannot afford it through the usual criminal court process.

## 2. Funds raised through asset forfeiture should not be given to law enforcement agencies.

**Current CAF law allows people's property to be seized without proof of guilt of a crime.** Still, police departments in Illinois can pocket 90% of the proceeds of these seizures, creating a perverse incentive for police officers to "scout" for assets.<sup>43</sup> While some smaller police departments in Illinois may benefit from CAF to fund their departments, in Chicago, CAF money is a drop in the bucket of CPDs vast budget, which poses both an ethical and a constitutional issue about the role of police and presents a conflict with a core U.S. value codified in the Fifth Amendment Right: in brief, the right to private property that cannot be taken away without due process.<sup>44</sup> Any funds that are acquired through asset forfeiture should go into a neutral account, such as a city or county's general fund, to ensure that police don't have an incentive to seize property for profit. This follows New Mexico and Nebraska's reforms<sup>45</sup> that restrict the use of CAF funds to specific purposes or away from the police department. In addition, there should be more transparency of how these funds are used.

## 3. Data collection for CAF in Illinois should be broadened and made more accessible.

**CAF data collection currently suffers from both access and substantive issues.** Current data reporting on CAF by the Illinois State Police is difficult to access as it is in a non-searchable PDF format. In addition, these PDFs are just county aggregate and case-level data is only available upon request. The ISP should create a searchable, case-level database that contains all collected CAF data to allow for community members to understand the extent of CAF in their community, county, and state. In addition, data on Illinois civil asset forfeiture should be broadened to include a fuller picture of the life of a CAF case from

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<sup>41</sup> Institute for Justice. (n.d.) Civil Forfeiture Reforms on the State Level. <https://ij.org/legislative-advocacy/civil-forfeiture-legislative-highlights/>

<sup>42</sup> Maharrey, M. (2023). "West Virginia Bill Would End Civil Asset Forfeiture, Opt State Out of Federal Program." Tenth Amendment Center. Accessible at <https://blog.tenthamentendmentcenter.com/2023/01/west-virginia-bill-would-end-civil-asset-forfeiture-opt-state-out-of-federal-program>; Maharrey, M. (2023). "New York Bill Would End Civil Asset Forfeiture and Opt State Out of Federal Forfeiture Program" Tenth Amendment Center. Accessible at <https://blog.tenthamentendmentcenter.com/2023/01/new-york-bill-would-end-civil-asset-forfeiture-and-opt-state-out-of-federal-forfeiture-program>

<sup>43</sup> Carpenter, D. (2014). When Legal is Not Ethical: The Case of Civil Forfeiture. *International Journal of Ethics*, 10(3).

<sup>44</sup> U.S. Constitution, Amendment 5. Constitution Annotated. Accessible at: <https://constitution.congress.gov/constitution/amendment-5/#:~:text=No%20person%20shall%20be%20held,the%20same%20offence%20to%20be>

<sup>45</sup> Institute for Justice. (n.d.). "Grading State & Federal Civil Forfeiture Laws." Accessible at: <https://ij.org/report/policing-for-profit-2/grading-state-federal-civil-forfeiture-laws/>

seizure through the conclusion of the civil and criminal cases. Lastly, data collection should give a better picture of the financial impact of CAF both on the side of the property owner as well as law enforcement, prosecutors, and the court.

#### **4. The burden of proof in civil and criminal asset forfeiture cases should be raised higher for the government and more protections should be created for property owners.**

**Although Illinois reformed its CAF law in 2018,<sup>46</sup> further improvements can be made to prevent low-income litigants from facing economic consequences for a legal issue.** For example, in Washington, DC, a 2014 civil forfeiture reform requires a judicial order or establishment of probable cause prior to seizing property.<sup>47</sup> The reform also requires that property owners are given notice of seizure and allows for the seizure to be contested.<sup>48</sup> This means that, “[c]ar owners would have the right to drive their vehicles pending final forfeiture action, and people whose cash had been seized could appeal if the money was urgently needed to pay for food or rent.”<sup>49</sup>

As long as CAF continues to exist, Illinois lawmakers should adopt similar protections for asset forfeiture by (1) requiring that probable cause is established before an asset is seized and (2) increasing protections for people dependent seized on assets, mostly low-income people, to allow them to contest seizures when they demonstrate significant need.

#### **5. Investments must be made to aid self-represented litigants as they navigate the forfeiture process.**

**Given the difficulty that CAF litigants had in navigating the court process, additional resources – such as, for example, self-help guides and increased access to self-represented litigant coordinators – are necessary to ensure that all people can have a just outcome.** “Know Your Rights” materials and better access to existing or improved automated and standardized court links and documents, such as a simple guide of what paperwork property owners needed to file and a step-by-step guide for how to file it, are easy fixes to improve accessibility. Cook County CAF courts may also consider an integrated web-based process (through court technology like Odyssey) that allows for property owners to file necessary paperwork virtually.

Likewise, for so long as CAF continues to exist, there should be an investment made in increased legal aid and pro bono representation that can help CAF litigants navigate the court process. Many of the burdens of CAF court would be alleviated if property owners had access to free and low cost legal services as states’ attorneys and judges are not able to assist property owners in that way. Legal aid and pro bono

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<sup>46</sup> *Supra* note 24.

<sup>47</sup> O’Harrow, Jr., R. (2014). “D.C. Council Votes to Overhaul Asset Forfeiture, Give Property Owners New Rights.” *Washington Post*. Accessible at: [https://www.washingtonpost.com/investigations/dc-council-votes-to-overhaul-asset-forfeiture-give-property-owners-new-rights/2014/11/18/d6945400-6f72-11e4-8808-afaa1e3a33ef\\_story.html](https://www.washingtonpost.com/investigations/dc-council-votes-to-overhaul-asset-forfeiture-give-property-owners-new-rights/2014/11/18/d6945400-6f72-11e4-8808-afaa1e3a33ef_story.html)

<sup>48</sup> Racine, K. (2021). Office of the Attorney General for the District of Columbia: Fiscal Year 2021 Civil Asset Forfeiture Report. Accessible at: <https://oag.dc.gov/sites/default/files/2021-12/2021-Dec.-29-Civil-Forfeiture-LTR-and-Report-2021-.pdf>

<sup>49</sup> *Supra* note 47.

representation would allow litigants to have guidance through the confusing CAF court process.

## 6. To protect the due process rights of Illinoisans in the future, state legislators will need to reform not only state forfeiture laws but also close the back door to the U.S. DOJ.

**The U.S. Department of Justice is involved in seizures and forfeitures in Illinois through its equitable sharing program.**<sup>50</sup> Given Illinois' high use of the equitable sharing program, simply addressing state asset forfeiture law is not enough. By restraining the use of the federal asset sharing program, legislators ensure that state law enforcement agencies don't circumvent future reforms by outsourcing forfeiture litigation to the federal government.

# CONCLUSION

**Civil asset forfeiture is ineffective at deterring crime, does not have an impact on crime rates, and disproportionately harms lower-income people of color.** Research shows that crime reduces when neighborhoods are invested in<sup>51,52</sup> and through restorative approaches. CAF takes the opposite of this evidence-based approach, instead leeching assets from communities that are already stripped of resources by systemic racism.

Civil asset forfeiture, though originated as a means to fight against large-scale unlawful enterprises, is problematic in its current state. No prior conviction or proceedings are required for the police to carry out the forfeiture, thus creating a loophole that allows the police department to seek and derive profit from forfeitures. But the systemic deficiencies inherent in current civil asset forfeiture procedures are not only a trigger for increased police corruption. Our analysis of 230 court-watching reports in the Circuit Court of Cook County shows that they also create various problems and impose barriers, both personal and financial, for the property owners.

While CAF is not effective at deterring crime, it is effective at creating a source of profit for police departments. According to the *Chicago Reader*: "Between 2009 and 2016 CPD forfeited more than \$70 million," and about 65% was retained by the department, with "the rest divided up between the Cook County State's Attorney's Office and the Illinois State Police."<sup>53</sup> The *Chicago Reader* described CPD's forfeiture fund as an "off-the-books stream of income."<sup>54</sup>

## Cursory findings acquired through our court-watching indicate that current civil

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<sup>50</sup> *Supra* note 22.

<sup>51</sup> Ramey, D. & Shrider, E. (2014). New Parochialism, Sources of Community Investment, and the Control of Street Crime. *Criminology & Public Policy*, 13(2), 193-216.

<sup>52</sup> Love, H. (2021). "Want to Reduce Violence? Invest in Place." Brookings Institution. Accessible at: <https://www.brookings.edu/research/want-to-reduce-violence-invest-in-place/>

<sup>53</sup> Dukmasova, M. (2019). SCOTUS Civil Asset Forfeiture Decision Won't End Profit-Driven Policing. *Chicago Reader*. Accessible at: <https://chicagoreader.com/news-politics/scotus-civil-asset-forfeiture-decision-wont-end-profit-driven-policing>

<sup>54</sup> *Supra* note 37.

**asset forfeiture processes are confusing, costly, and lengthy for the property owners. We therefore advocate that legislators consider ending the usage of civil asset forfeiture in the state of Illinois.**

New Mexico recently abolished CAF and saw no noticeable increase in crime as compared to neighboring states.<sup>55</sup> Criminal asset forfeiture, which has higher due process standards and requires a criminal conviction as a prerequisite for asset seizure, should be the only form of asset forfeiture. In the meantime, we propose that more rigorous data collection must be adopted by the state of Illinois in order to ensure that civil asset forfeiture can be monitored by police departments and advocates. We also provide other recommendations (detailed in the recommendations section) that serve to mitigate harm to self-represented litigants in CAF court.

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<sup>55</sup> *Supra* note 11.

# APPENDICES

## APPENDIX 1

### Additional Data

Table 8: Court-Watching Data – Perceived Races and Genders of Property Owners

PERCEIVED RACE	TOTAL PEOPLE	FEMALE	MALE	UNSURE
Asian	3	2	1	0
Black or African-American	77	21	55	1
Latine or Hispanic	58	19	39	0
Middle Eastern	6	3	3	0
Not Sure	67	12	13	42
White	19	3	15	1
<b>All Cases</b>	<b>230</b>	<b>60</b>	<b>126</b>	<b>44</b>

Table 9: Seizing Entity

SEIZING ENTITY	Suburban District	
TOTAL	13	
	DISTRICT	COUNT
	Bellwood	1
	Evanston	2
	Evergreen Park	1
	Hickory Hills	1
	North Riverside	1



	<b>Oak Lawn</b>	1
	<b>Oakland</b>	1
	<b>Orland Park</b>	2
	<b>Schiller Park</b>	2
	<b>Tinley Park</b>	1
<b>SEIZING ENTITY</b>	Illinois State Police	
<b>TOTAL</b>	1	
	<b>DISTRICT</b>	<b>COUNT</b>
	<b>Chicago State Police</b>	1
<b>SEIZING ENTITY</b>	City of Chicago	
<b>TOTAL</b>	21	
	<b>DISTRICT</b>	<b>COUNT</b>
	<b>Chicago Police Department</b>	21
<b>SEIZING ENTITY</b>	Unsure	
<b>TOTAL</b>	181	
<b>ALL RESPONSES</b>	232	

Table 10: CPD Seized Assets (2019 - 2021)

CATEGORY	2019	2020	2021
<b>Currency</b>			
Number of Currency Seizures	1,739	1,204	1,020
Percentage of All Assets Seized	63.4%	64.5%	60.2%
Value of Currency seized	\$4,656,936.54	\$3,857,596.10	\$3,068,436.00
Percentage of Total Value Seized	41.2%	45.2%	37.5%

<b>Conveyances (Vehicles)</b>			
Number of Conveyances Seizures	957	630	674
Percentage of All Assets Seized	34.9%	33.8%	39.8%
Value conveyances seized	\$6,594,815.00	\$4,212,918.00	\$5,123,943.00
Percentage of Total Value Seized	58.4%	49.3%	62.5%
<b>Personal Property</b>			
Number of personal property items seized	49	32	0
Percentage of All Assets Seized	1.8%	1.7%	0.0%
Value Personal Property Items Seized	\$39,832.00	\$472,096.20	\$0
Percentage of Total Value Seized	0.4%	5.5%	0.0%
<b>TOTAL NUMBER OF ASSETS SEIZED</b>	2,745	1,866	1,694
<b>TOTAL VALUE OF ASSETS SEIZED</b>	\$11,291,583.54	\$8,542,610.30	\$8,192,379.00

# APPENDIX 2

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## Report Methodology

### Data Collection

Chicago Appleseed primarily generated insights in this report through court-watching 230 civil asset forfeiture cases in the Circuit Court of Cook County between March and August of 2022. Data from these cases was collected by 17 Chicago Appleseed Center for Fair Courts trained volunteers in three different civil asset forfeiture courtrooms in the County Division, located in District 1 of Cook County. All observations referenced in this report were collected by volunteers who completed a one-hour training with Chicago Appleseed Center for Fair Courts staff. Training sessions centered on the topic of civil asset forfeiture, what to expect during virtual court calls, etc. were conducted on a weekly basis to ensure that volunteers would successfully navigate virtual calls and go into these calls with fundamental knowledge of the subject matter.

Court-watchers observed civil asset forfeiture court calls in the County Division (District 1) of the Circuit Court of Cook County virtually through Zoom in order to understand how civil asset forfeiture courts function. Compared to court-watching for other projects, court-watchers found it less difficult to navigate the civil asset forfeiture court calls due to there being a limited number of civil asset forfeiture judges (i.e. three), a consistent courtroom number (i.e., 1707), and two types of civil asset forfeiture calls (i.e. case management calls or trial calls). Using a standardized survey form, volunteer court-watchers collected data on each case they observed within a call – e.g., what type of property was seized, why the property was seized, who appeared for the court call versus who owned the property in question, whether the property owner was self-represented or had an attorney, whether a property owner requested a Hardship Motion or not, whether a property owner appeared to understand what was going on or not, etc. – and matters pertaining to judicial temperament. Regarding judicial temperament, court-watchers were asked to share their overall impression of the judge’s preparedness, treatment of property owners, treatment of the judicial staff, communication style, and control over administrative matters and procedures. Our court-watching efforts were focused on investigating, without bias, stakeholders’ allegations regarding civil asset forfeiture calls “on the ground,” so to speak. Upon conclusion of this project’s court-watching efforts, we discovered that the data paints a troubling picture of unsupported, confused, and majority self-represented property owners who are attempting to navigate a system they seldom understand and perhaps was not designed with them in mind.

Secondary data was collected from Illinois State Police Illinois Seizure and Awarded Assets 2022 Annual Report reports. We also reviewed scholarly and “gray” literature to supplement our court-watching findings and gain an understanding of how CAF impacts people in Illinois.

### Data Analysis

Once we completed 230 observations, we concluded the court-watching component of the project and commenced data analysis. Court-watching survey data was exported from Google Forms into an Excel file,

and then cleaned through a combination of automation in Python and manual effort. For example, for open-ended questions such as “What property was seized?” or “Why was the property seized?”, responses were transformed to lowercase strings with no leading or trailing spaces in Python, and responses such as “nan”, “unsure”, etc. were categorized automatically as unknown. Then, each response was manually categorized into one or more indicator columns—i.e. a response of “a vehicle and cash” would be entered as a 1 in vehicle\_seized and cash\_seized, but a 0 in drugs\_seized and property\_seized. These indicator columns were then summed and exported in Python to create the overall counts referenced in this report. For reporting on general trends, such as judge behavior or the different kinds of Zoom difficulties, staff and data specialists combed through court-watchers’ text responses and summarized them into recurring themes and findings.

## Ethical Consideration and Limitations

This research was carried out according to social science research principles, as guided by the Chicago Appleseed Center for Fair Courts research standards.<sup>56</sup> Across all research projects, our methodological approach is rooted in the protection of human subjects, mitigation of risk, and reduction of any forms of harm the study may cause participants during or following the research process.

Court-watching data is based on volunteers’ individual and subjective perceptions. While we recognize that subjectivity may influence the data collected from court-watching, this information is relevant in that (a) it helps contextualize interview and quantitative data and (b) these observations help approximate how outside observers (i.e., “the public”) perceive court actors (i.e. prosecutors, judges, probation officers), as well as the kinds of requests and decisions they make. It is also important to note that because proceedings are still held over videoconference, court-watchers identify themselves as “Chicago Appleseed Volunteer” or “Member of the Public,” so courtroom actors are aware they are being observed. We recognize that this may cause court actors to shift their behavior and decisions in our presence, and as such, is a limitation of this report.

Several limitations may have impacted the findings of this project. First, the presence of court-watchers in a court-room inherently changes the dynamic of that court-room. Therefore, while court-watchers maintain objectivity in their observations, when a judge and other court-officials know they are being observed, they may alter their behavior and practices. In addition, our team struggled to gain consistent access to one of the three CAF court calls. This deficit of observations for one of the three CAF courtrooms may have an impact on our findings. Court-watchers recorded the apparent race and gender of property owners when possible. Given that race and gender cannot be objectively determined by an outside observer, there is likely a significant margin of error in this recorded data. There were also limitations in the data analysis, given the data that the court-watchers were able to record. Generally speaking, not all of the information asked for, or relevant to a CAF case, will be discussed at every court date, meaning that some information was likely just not available to observe. Court-watchers were not always able to record the value of assets that were seized or separate out the value of individual assets when multiple assets were seized. As a result, a small sample size on the value of assets seized may skew the results.

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<sup>56</sup> See e.g., [www.chicagoappleseed.org/wp-content/uploads/2021/10/2021-Research-Standards-Framework-2.pdf](http://www.chicagoappleseed.org/wp-content/uploads/2021/10/2021-Research-Standards-Framework-2.pdf)



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