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Note

Disinherited by the State? Civil Asset Forfeiture and Successors' Rights in Connecticut

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Civil asset forfeiture (CAF) allows the government to seize property suspected of being connected to criminal activity, often before any criminal conviction is secured. This Note examines the scope of CAF laws in Connecticut, with the aim of ascertaining what rights, if any, successors have to reclaim property seized but not yet forfeited at the time of the owner's death. Tracing the legislative history and judicial interpretation of CAF in Connecticut, I synthesize the current legal landscape as to the rights of claimants in forfeiture proceedings. While Connecticut has taken steps to reform its CAF statutes and the courts have addressed key constitutional challenges, I argue that the current CAF regime insufficiently protects successors' rights and exacerbates systemic inequities. CAF disproportionately impacts race–class subjugated communities, particularly within the context of the War on Drugs and federal equitable sharing programs. Connecticut lawmakers should look toward addressing these key social issues by moving away from CAF proceedings, protecting the rights of innocent heirs, and eliminating the financial incentives in CAF practice that perpetuate inequity.

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INTRODUCTION

When law enforcement suspects that property is connected to criminal activity, federal and state statutes permit them to take possession of such property through civil asset forfeiture (CAF).[1] While the exact process and parameters vary by jurisdiction, CAF typically affects property connected to criminal offenses. It entails an *in rem* proceeding—meaning a civil suit is brought against the *property itself*—often occurring *before* any criminal conviction for the underlying crime.[2] Each of Connecticut's four CAF statutes—§ 54-36h,[3] § 54-36p,[4] § 54-33g,[5] and § 54-36o[6]—reflect these qualities.

In Connecticut, property need only be seized in a lawful criminal arrest or lawful search resulting in an arrest to enable the State's Attorney's office to initiate a civil suit seeking forfeiture. While the State is required to give notice of the action to the owner and any other person with an interest in the property, civil proceedings do not begin until *after* the criminal proceedings related to the initial arrest have been disposed of. The State is only required

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[1] *See, e.g.*, 18 U.S.C. § 981(a)(1) (authorizing civil forfeiture of property "involved in," "constituting, derived from, or traceable to" a variety of specified federal crimes).

[2] *See* Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 638 n.5 (1989) (Blackmun, J., dissenting):

> The theory (or, more properly, the fiction) underlying civil forfeiture is that the property subject to forfeiture is itself tainted by having been used in an unlawful manner. The right of the Government to take possession does not depend on the Government's ultimately convicting the person who used the property in an unlawful way, nor is it diminished by the innocence or bona fides of the party into whose hands the property falls.

[3] CONN. GEN. STAT. § 54-36h (2023) ("Forfeiture of moneys and property related to illegal sale or exchange of controlled substances or money laundering. In rem proceeding. Disposition").

[4] CONN. GEN. STAT. § 54-36p (2017) ("Forfeiture of moneys and property related to sexual exploitation, prostitution and human trafficking. In rem proceeding. Disposition").

[5] CONN. GEN. STAT. § 54-33g (2021) ("Forfeiture of moneys and property related to commission of criminal offense. In rem proceeding. Disposition. Secondary evidence of forfeited property").

[6] CONN. GEN. STAT. § 54-36o (2017) ("Property derived from identity theft subject to forfeiture to state. Exceptions. Proceeds").

to return the property if such a criminal proceeding does *not* result in a dismissal, guilty plea, or guilty verdict. Upon an order of forfeiture, the State may then sell such property at public auction, whose proceeds, along with any monies forfeited, are first applied to court liens, storage costs, and court costs. Any remaining balance is deposited in the State's appropriate related account. In other words, CAF allows the State to seize property and sell it for profit.

While case law and policy at both the federal and state levels impose *some* limits to its use,[7] when contextualized within the criminal justice system, CAF disproportionately affects race-class subjugated communities.[8] Considering that these communities generally face great barriers to building generational wealth,[9] the dispossession of one's property can have a lasting impact on an individual and their successors' financial circumstances. So, what happens if an individual whose property was seized passes before the related criminal proceeding is disposed of? Does the government have the right to hold this property indefinitely? Are successors to that individual's estate able to recover the seized assets? This Note seeks to define the limits of CAF in Connecticut and answer these questions.

Part I tracks the evolution of the four CAF statutes and sets forth the current scope of Connecticut's intestacy statutes. Part II(A) discusses the judicial application of Sections 54-33g and 54-36h prior to the enactment of the federal Civil Asset Forfeiture Reform Act of 2000 (CAFRA). Part II(B) reviews pre-CAFRA federal law. Part III highlights the changes made by CAFRA and the 2017 Connecticut CAF reforms, while Part IV analyzes the post-CAFRA decisions of both Connecticut courts and the Supreme Court.

Part V discusses the disparate impact of CAF on race-class subjugated communities, citing the War on Drugs as the primary contributing factor. Part VI provides an overview of the four states that have done away with CAF entirely. Lastly, the Conclusion addresses the rights and remedies, if

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[7] *See, e.g.*, CONN. GEN. STAT. § 54-36h(d) (2023) ("No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or omission committed by another person if such owner or lienholder did not know and could not have reasonably known that such property was being used or was intended to be used in, or was derived from, criminal activity."); Timbs v. Indiana, 139 S. Ct. 682 (2019) (holding that the Eighth Amendment's Excessive Fines Clause applies to states' CAF actions).

[8] *See* Joe Soss and Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race–Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 565, 567 (2017) (coining the term to refer to policed communities "positioned at the intersection of race and class systems . . . [subject to] civic ostracism, social and political oppression, economic marginalization, and state–led governance.").

[9] *See* Richard D. Kahlenberg & Kimberly Quick, *Attacking the Black-White Opportunity Gap That Comes from Residential Segregation*, THE CENTURY FOUNDATION 2 (2019), https://production-tcf.imgix.net/app/uploads/2019/06/24132107/housingsegregation_PDF.pdf ("Because homes are typically the largest financial asset for most Americans, segregated markets significantly reduce the accumulated wealth of blacks. . . . While median income for black households is 59 percent that of white households, black median household net worth is just 8 percent of white median household net worth.").

any, available under Connecticut's current legal framework for successors to forfeited property and discuss possible next steps for ending CAF in Connecticut.

I. STARTING FROM STATUTES

A. *Civil Asset Forfeiture*

Though each of Connecticut's four CAF statutes calls for an *in rem* proceeding, they differ primarily in the related criminal activity they target and the allocation of post-auction proceeds from the forfeited property.

1. *Section 54-33g: General Crime*

The oldest of Connecticut's current[10] CAF statutes, Section 54-33g, went into effect in 1963.[11] Not surprisingly, it has changed significantly since its enactment. Whereas the original P.A. 652 § 8 applied only to any property "possessed, controlled, designed or intended for use or which is or has been used or which may be used as the means of committing any criminal offense,"[12] Section 54-33g has expanded its application to include any property "which constitutes the *proceeds* of the commission of any criminal offense."[13] However, within its definition of "criminal offense," the law today carves out an exception for five drug-related statutes[14]—two of which are criminal statutes separately targeted by another CAF provision.[15]

The first iteration of Section 54-33g provided that within forty-eight hours of the seizure, the judge who issues the warrant leading to the seizure must issue a summons and notice to the property owner for a hearing date set within six to twelve days after such notice had been served.[16] At such "show-cause" hearings, a party claiming an interest in the property is deemed a defendant to the proceeding and must prove "why such property should not be adjudged a nuisance and ordered to be destroyed or otherwise disposed of . . . ."[17] Should the judge rule against them, the seized property

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[10] There are CAF statutes preceding Section 54-33g, but they are not relevant here as they were effectively repealed by Section 54-33g.

[11] 1963 Conn. Pub. Acts 1003 § 8.

[12] 1963 Conn. Pub. Acts 1001 § 1(a).

[13] CONN. GEN. STAT. § 54-33g(a) (2021) (emphasis added).

[14] *Id. See also* CONN. CONN. GEN. STAT. § 21a-277 (2025) ("Penalty for illegal manufacture, distribution, sale, prescription, dispensing"); CONN. GEN. STAT. § 21a-278 (2025) ("Penalty for illegal manufacture, distribution, sale, prescription or administration by non–drug–dependent person"); CONN. GEN. STAT. § 21a-278b (2025) ("Penalty for illegal manufacture, distribution, sale, prescription, administration or growing of cannabis or cannabis products"); CONN. GEN. STAT. § 21a-279 (2025) ("Penalty for illegal possession of a controlled substance other than cannabis. Alternative sentences. Immunity").

[15] *See* CONN. GEN. STAT. § 54-36h(a) (2023) (subjecting to forfeiture property related to violations of Section 21a-277 and Section 21a-278).

[16] 1963 Conn. Pub. Acts 1003 § 8.

[17] *Id.*

would be deemed a nuisance and held until any criminal trial related to the subject property is complete.[18] Upon forfeiture, physical property would be destroyed or disposed of to a charitable, educational, or governmental institution, while money would become property of the state.[19] The seized property would only be returned if the criminal allegations were not found to be true or if the property belonged to a party not a defendant in the proceeding.[20]

Two years later, the legislature added substantive language to clarify its application to seized property "which the state claims to be a nuisance and desires to have destroyed or disposed of" and allow the state to use seized property that has not been ordered forfeited as evidence in any criminal trial.[21] The next change, in 1972, was procedural in nature and required—if the CAF defendant was already subject to the jurisdiction of the superior court—that the "show-cause" hearing be held by such court, assuming jurisdiction over the forfeiture matter.[22]

In 1975, the legislature increased the time allotted for the court to issue the summons from forty-eight hours to ten days.[23] Also added for the first time was a version of the requirement that the court shall identify and give notice not just to the property owner but also "any other person as appears to have an interest in such property."[24] In the event that property found to be a nuisance was also subject to a "bona fide mortgage, assignment of lease or rent, lien or security interest," the state was prohibited from destroying or disposing of it in violation of such third-party interest.[25] Once realized that the interest of a third-party creditor was to be protected, in the following year, the legislature provided that the court may order an auction of any valuable property found to be a nuisance.[26] Auction proceeds, along with any forfeited money, then became property of the State.[27]

It was not until 1984 that the statute was modified to include reference to the inciting property seizure, which must have been seized "as a result of

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[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] 1965 Conn. Pub. Acts 244–45 (emphasis omitted).

[22] 1972 Conn. Acts 32–33 (Reg. Sess.).

[23] 1975 Conn. Acts 46–47 (Reg. Sess.).

[24] *Compare* CONN. GEN. STAT. § 54-33g(a) (2021), *with* 1975 Conn. Acts 46-7 (Reg. Sess.) (adding that "any person claiming of record a bona fide mortgage, assignment of lease or rent, lien or security interest in, the property" shall also be served with a summons) (capitalization altered).

[25] 1975 Conn. Acts 46–47 (Reg. Sess.) (capitalization altered). Further, any money ordered forfeited, if subject to a third–party interest, would remain subject to such interest. *Id.*

[26] 1976 Conn. Acts 73, 76 (Reg. Sess.) ("When any property or valuable prize has been declared a nuisance and condemned under this section, the court may also order that such property be sold by sale at public auction in which case the proceeds shall become the property of the state; provided, any person who has a bona fide mortgage, assignment of lease or rent, lien or security interest shall have the same right to the proceeds as he had in the property prior to sale.") (capitalization altered).

[27] 1987 Conn. Acts 430 (Reg. Sess.).

a search incident to an arrest, a warrantless arrest, or a search warrant."[28] However, no more than five years passed before this language was changed to "lawful arrest or lawful search."[29] The 1989 iteration of the statute further approximates the current version by carving out four of the criminal offenses accepted today,[30] and, importantly, establishing the clear and convincing evidence standard as the state's burden of proof.[31] The last exception was added in 2021,[32] at the same time that the related statute was created.[33]

The largest substantive change, prior to the 2017 reforms, came into effect in 2014. P.A. 14-233 § 1 is the first time such forfeiture proceedings were statutorily designated as *in rem*.[34] The 2014 statute allowed for the forfeiture of property constituting the *proceeds* of the commission of criminal offenses, rather than just the property involved in the commission of a criminal offense.[35] More importantly, however, it further extended the time frame within which the state may initiate forfeiture proceedings from ten days to ninety days, and provided that such hearings must occur at least two weeks from notice, as opposed to within six to twelve days of seizure.[36]

The 2014 statute also provided that both forfeited money and auction proceeds of forfeited property would be allocated differently—70% to the police, 20% to the Criminal Injuries Compensation Fund, and the remaining 10% to the general fund—for the following two years, after which all such funds would again be deposited in the general fund.[37] Lastly, the 2014 iteration introduced the provision that "[i]n any criminal prosecution, secondary evidence of property condemned and destroyed pursuant to this section shall be admissible against the defendant to the same extent as such evidence would have been admissible had the property not been condemned and destroyed."[38]

2. *Section 54-36h: Controlled Substances and Money Laundering*

It should come as no surprise that Connecticut enacted the first iteration of Section 54-36h in 1986 during the War on Drugs.[39] While today's statute

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[28] 1984 Conn. Acts 959–60 (Reg. Sess.) (capitalization altered).

[29] 1989 Conn. Acts 677, 680 (Reg. Sess.) (capitalization altered).

[30] *Compare* 1989 Conn. Acts 677–80 (Reg. Sess.), *with* CONN. GEN. STAT. § 54-33g(a) (2021) (exempting property seized in drug-related criminal offenses from forfeiture proceedings).

[31] 1989 Conn. Acts 677, 680 (Reg. Sess.).

[32] 2021 Conn. Acts 1837, 1981–82 (Spec. Sess.).

[33] 2021 Conn. Acts 1837, 1854–55 (Spec. Sess.) (codified as CONN. GEN. STAT. § 21a-278b (2025) ("Penalty for illegal manufacture, distribution, sale, prescription, administration or growing of cannabis or cannabis products.")).

[34] 2014 Conn. Acts 1725 (Reg. Sess.).

[35] *Id.*

[36] *Compare id.*, *with* 1989 Conn. Acts 677, 680 (Reg. Sess.).

[37] 2014 Conn. Acts 1725–27 (Reg. Sess.).

[38] *Id.* at 1727.

[39] 1986 Conn. Acts 1149–50 (Reg. Sess.) ("This Act shall take effect July 1, 1986."). *See infra* Part V(B) for greater discussion on the War on Drugs and its impact on CAF policy and race–class subjugated communities.

targets property connected with both controlled substances and money laundering, the original version applied only to the former.[40] The general definition of "controlled substance" has not changed—still referring to any substance enumerated in Schedules I to V.[41] Of course, the types of substances and their respective rankings have changed significantly since.[42] Take cannabis, for example—today a Schedule II drug,[43] in 1986 a Schedule I drug.[44] Critically, the assigned schedule of a controlled substance has a great bearing on the associated criminal charge and sentence.

P.A. 86-404 was only in effect for a few years before the legislature introduced significant changes. First, P.A. 88-364 substituted property for monies.[45] P.A. 89-269 then brought the statute much closer to the version in effect today.[46] With money laundering now another criminal nexus for forfeiture,[47] it follows then that the legislature would also extend the statute's reach to include property *derived from* the proceeds of drug sales, and not just monies *constituting* the proceeds of drug sales.[48] Notably, P.A. 89-269 made forfeiture profitable. Nearly three-quarters of the money acquired through CAF and deposited in the "drug assets forfeiture revolving fund" was allocated for local police departments.[49]

On one hand, P.A. 89-269 is symptomatic of the War on Drugs and Tough-on-Crime rhetoric dominating the tail end of the twentieth century. On the other hand, P.A. 89-269 enacted certain limitations to CAF

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[40] 1986 Conn. Acts 1149 (Reg. Sess.).

[41] *Compare* 1985 Conn. Acts 1255, 1322–24 (Reg. Sess.) ("'Controlled substance' means a drug, substance, or immediate precursor in schedule I to V, inclusive, of section 21a–242"), *with* CONN. GEN. STAT. § 21a-240(9) (2025) ("'Controlled substance' means a drug, substance or immediate precursor in schedules I to V, inclusive, of the Connecticut controlled substance scheduling regulations adopted pursuant to section 21a-243.").

[42] *Compare* 1986 Conn. Acts 137–40 (Reg. Sess.) (the operative schedules in 1986), *with* DEP'T CONSUMER PROT. DRUG CONTROL DIV., CONTROLLED DRUG SCHEDULES, VIOLATIONS & PENALTIES 3–46 (2015), https://portal.ct.gov/-/media/dcp/drug_control/pdf/controlleddrugschedulesviolations penaltiespdf.pdf [hereinafter CONTROLLED DRUG SCHEDULES] (detailing the operative schedules in 2024).

[43] CONTROLLED DRUG SCHEDULES, *supra* note 42, at 11. It's worth noting that while *synthetic* cannabis remains classified as a Schedule I drug, cannabis was re-classified as a Schedule II drug in 2013. CONN. AGENCIES REGS. § 21a-243-8 (2013).

[44] 1973 Conn. Acts 1674, 1682–84 (Reg. Sess.). Connecticut first enacted its drug scheduling system in 1973, following the federal Controlled Substances Act of 1970. *See* Controlled Substances Act, Pub. L. No. 91-513, 84 Stat. 1242 (1970) (codified as amended at 21 U.S.C. §§ 801 et seq.).

[45] 1988 Conn. Acts 1136, 1169 (Reg. Sess.).

[46] *Compare* 1989 Conn. Acts 677–79 (Reg. Sess.) *with* CONN. GEN. STAT. § 54-36h (2023) ("Forfeiture of moneys and property related to illegal sale or exchange of controlled substances or money laundering. In rem proceeding. Disposition.").

[47] 1989 Conn. Acts 677–78 (Reg. Sess.) ("All property constituting, or derived from, the proceeds obtained, directly or indirectly, by a corporation as a result of [money laundering in the first, second, and third degrees].") (capitalization altered).

[48] *Id*.

[49] Additionally, 20% went to the state alcohol and drug abuse commission, and the remaining 10% was designated for the prosecution of those involved in the drug economy. 1989 Conn. Acts 679 (Reg. Sess.).

proceedings, which remain in effect today.

The first significant limitation is the imposition of a deadline by which the State must file its forfeiture petition. Under P.A. 86-404, the State was permitted to petition the Court *at any time* post-seizure.[50] Today, Section 54-36h requires that the petition be brought *within ninety days* post-seizure.[51] Next, while P.A. 86-404 previously allowed for the forfeiture of property obtained in violation of *any* provision of the general statutes,[52] Section 54-36h applies only to proceeds obtained in violation of two drug trafficking statutes.[53] Lastly, although the State has always had the burden of proof in CAF proceedings, P.A. 86-404 merely required a preponderance of the evidence.[54] The higher standard of clear and convincing evidence that we have today[55] was set by P.A. 89-269.[56]

It took nearly thirty years for the legislature to enact any further substantive change to the statute. Section 54-36h, as we know it today, is the product of Connecticut's 2017 CAF reforms, which are discussed in Section II(B) below.

3. *Section 54-36o: Identity Theft*

As compared to the previously discussed statutes, the current iteration of Section 54-36o differs very little from the original statute enacted in 2009.[57] In fact, the only substantive changes are those made by the 2017 CAF reforms. As such, there is little legislative history to recount herein. However, a brief overview of the statute follows.

Section 54-36o allows for the forfeiture of property derived from or constituting the proceeds of identity theft.[58] "A person commits identity theft when such person knowingly uses personal identifying information of another person to obtain or attempt to obtain money, credit, goods, services, property or medical information without the consent of such other person."[59] Section 54-36o specifically cites to eight criminal statutes of varying severity.[60] The *in rem* proceeding conducted under this statute is no different

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[50] 1986 Conn. Acts 1149–50 (Reg. Sess.).

[51] CONN. GEN. STAT. § 54-36h(b).

[52] 1986 Conn. Acts 1149 (Reg. Sess.).

[53] *See* CONN. GEN. STAT. § 21a-277 ("Penalty for illegal manufacture, distribution, sale, prescription, dispensing"), *and* CONN. GEN. STAT. § 21a-278 ("Penalty for illegal manufacture, distribution, sale, prescription or administration by non–drug–dependent person").

[54] 1986 Conn. Acts 1149 (Reg. Sess.).

[55] CONN. GEN. STAT. § 54-36h(b) (2023).

[56] 1989 Conn. Acts 678 (Reg. Sess.).

[57] 2009 Conn. Acts 1138–39 (Reg. Sess.).

[58] CONN. GEN. STAT. § 54-36o(a) (2024).

[59] CONN. GEN. STAT. § 53a-129a(a) (2025).

[60] *See* CONN. GEN. STAT. § 53a-127g (2025) ("Unlawful possession of a personal identifying information access device: Class A misdemeanor."); CONN. GEN. STAT. §§ 53a-129b to -129d (2025) (covering identity theft in the first, second, and third degrees); CONN. GEN. STAT. § 53a-129e (2025)

than that under the other CAF statutes. A key difference, however, is *where* remaining monetary proceeds are held after the payment of court liens, storage costs, and court costs. Under Section 54-36o, such funds are ultimately deposited in the privacy protection guaranty and enforcement account within the general fund.[61]

4. *Section 54-36p: Sexually-Based Offenses*

The most recent of the CAF statutes, Section 54-36p, was enacted in 2010 and explicitly targeted property related to violations of ten specified sexual exploitation, prostitution, and human trafficking felonies.[62] As with Section 54-36o, the procedural requirements under this statute do not vary from the other CAF statutes. However, unlike Section 54-36o, there have been substantive changes made to the statute since its initial enactment.

Under the original statute, P.A. 10-112 § 1, any proceeds remaining after the required repayments were deposited into the general fund.[63] Three years later, the legislature specified that such proceeds be deposited to the Criminal Injuries Compensation Fund.[64] This second iteration of the statute, P.A. 13-166 § 1, also added a misdemeanor and two felonies for which related property could be subject to forfeiture.[65]

Curiously, in 2014, the legislature removed any language referencing pecuniary gain from the statute,[66] and only three years after the misdemeanor violation was added, the legislature removed that as well.[67] Whereas all previous modifications applied to all subsections of the statute, the 2016

("Trafficking in personal identifying information: Class D felony."); CONN. GEN. STAT. § 53a-130 (2025) ("Criminal impersonation: Class A misdemeanor."); CONN. GEN. STAT. § 21-120 (2025) ("License, registration or certificate obtained with false statement of personal identifying information or by misrepresentation or impersonation. Penalties."); CONN. GEN. STAT. § 21-121 (2025) ("Physically altered license, registration or certificate. Penalties.").

[61] CONN. GEN. STAT. § 54-36o(g) (2024). *See also* CONN. GEN. STAT. § 42-472a(a) (2025) (establishing the fund "[f]or the reimbursement of losses sustained by individuals injured" by specified identity theft-related crimes and for the enforcement of such statutes).

[62] 2010 Conn. Acts 811 (Reg. Sess.). *See also* CONN. GEN. STAT. § 53-21 (discussing sale of children); CONN. GEN. STAT. §§ 53a-86 to -87 (2025) (discussing prostitution in the first and second degrees); CONN. GEN. STAT. § 53a-90a (2025) ("Enticing a minor. Penalties."); CONN. GEN. STAT. § 53a-189a (2025) ("Voyeurism: Class D or C felony."); CONN. GEN. STAT. § 53a-189b (2025) ("Disseminating voyeuristic material: Class D felony"); CONN. GEN. STAT. § 53a-192a (2025) ("Trafficking in persons: Class A felony."); CONN. GEN. STAT. § 53a-196a (2025) ("Employing a minor in an obscene performance: Class A felony."); CONN. GEN. STAT. § 53a-196b (2025) ("Promoting a minor in an obscene performance: Class B felony."); CONN. GEN. STAT. § 53a-196c (2025) ("Importing child sexual abuse material: Class B felony.").

[63] 2010 Conn. Acts 813 (Reg. Sess.).

[64] 2013 Conn. Acts 676 (Reg. Sess.). *See also* CONN. GEN. STAT. § 54-215 (2025) (establishing the fund, originally enacted in 1978).

[65] 2013 Conn. Acts 675 (Reg. Sess.). *See also* CONN. GEN. STAT. § 53a-82 (2025) ("Prostitution: Class A misdemeanor."); CONN. GEN. STAT. § 53a-88 (2025) ("Promoting prostitution in the third degree: Class D felony."); CONN. GEN. STAT. § 53a-196i (2025) ("Commercial sexual exploitation of a minor: Class C felony.").

[66] 2014 Conn. Acts 1727 (Reg. Sess.).

[67] 2016 Conn. Acts 583 (Reg. Sess.).

changes added two misdemeanors in reference only to subsection (a)(4) of the act—the section pertaining to the actual *commission* of a felony, as opposed to the *profit* from such violation.[68]

The statute today targets only property related to the twelve specified sexual exploitation, prostitution, and human trafficking felonies and one misdemeanor[69]—the other misdemeanor having been removed in 2017.[70] Like the other three CAF statutes, Section 54-36p also underwent reform in 2017; again, such changes will be discussed in Section II(B) below.

B. *Intestate Succession*

When an individual passes without a will, the Connecticut legislature attempts to predict the intended disposition of the decedent's estate through a series of statutes governing intestate succession. This area of law is well settled. As such, this section does not cover each statute's legislative history. The focus on intestacy here is because these statutes provide the default rules of succession more generally. There are a multitude of ways individuals may opt out of these default rules—for example, through written wills or beneficiary designations—therefore the intestacy statutes provide a somewhat more predictable frame of analysis for ascertaining the rights of hypothetical successors to a decedent's seized property. Such default rules also apply when testamentary devices do not effectively dispose of an estate's assets.

1. *Required Heirs*

Naturally, when an individual passes, their surviving spouse is entitled to a portion of the estate.[71] In the case of simultaneous death of the spouses, the property of each will be disposed of as if the other had survived.[72] However, the portion that the surviving spouse may take is also subject to the existence of any surviving parent or child who are likewise entitled to a portion of the decedent's estate.[73] For both the decedent's parents and children, parentage must be established in accordance with Connecticut Parentage Act or by adoption for the parent-child relationship to be

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[68] *Id. See also* CONN. GEN. STAT. § 53a-83 (2025) ("Soliciting sexual acts: Class A misdemeanor."); CONN. GEN. STAT. § 53a-83a (2025) ("Patronizing a prostitute from a motor vehicle: Class A misdemeanor.") (discussing a statute repealed in 2017).

[69] CONN. GEN. STAT. § 54-36p(a) (2024). It should be noted, however, that while all twelve felonies remain in the statute, Section 53a-83a was removed from the list of offenses that would subject property to CAF in subsection (a)(4) of the current statute.

[70] 2017 Conn. Acts 141 (Reg. Sess.) (removing CONN. GEN. STAT. § 53a-83a).

[71] CONN. GEN. STAT. § 45a-437 (2025) ("Intestate succession. Distribution to spouse.").

[72] CONN. GEN. STAT. § 45a-440(a) (2025) ("Simultaneous death; disposition of property.").

[73] For example, while a surviving spouse is entitled to $100,000 and one half of the balance of the estate if they share children with the decedent, they are only entitled to one half the estate if the decedent has children outside of such marriage.

recognized and qualified for inheritance.[74]

All children[75] and legal representatives of any deceased children are entitled to an equal portion of the remaining estate after distribution to the surviving spouse.[76] In the case of the decedent having no children, the remaining estate is distributed equally to the decedent's surviving parents.[77] If there are no surviving parents, the estate is then distributed equally amongst the decedent's surviving siblings.[78] If the decedent has no siblings, property is distributed equally to the next of kin.[79] For purposes of intestate succession, Connecticut recognizes half-relatives as being of equal entitlement as whole relatives.[80]

If the probate court finds that any heir "has been absent from his home and unheard of for a period of seven years or more next prior to the date of the death of the decedent," such heir is presumed dead, and distribution will be ordered as though they had predeceased the decedent.[81]

2. *Abandoned Property*

While the probate court must first "cause reasonable efforts to be made to identify and locate the person entitled to the property," if it either cannot identify or locate such person, or if the court determines that no person is entitled to a distribution, it may order the property to be distributed as abandoned property.[82] Any property held or owed by the State which has been unclaimed for more than three years is presumed to be abandoned property.[83] When a deceased person's property is presumed abandoned, the abandoned property is subject to escheat.[84]

Although such property is presumed abandoned, the "Treasurer may

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[74] *See* CONN. GEN. STAT. § 45a-438(b) (2025) ("Distribution to children. Inheritance of child from or through parent."); CONN. GEN. STAT. § 45a-438b (2025) ("Inheritance of parent from or through child."). In the case of adoption, an adopted person and their biological parents have no rights of inheritance through each other. CONN. GEN. STAT. § 45a-731(6) (2025). Two exceptions apply here: (1) children adopted after their biological parent's passing remain entitled to their share of their biological parent's estate; and (2) adopted children with biological parents who are veterans remain entitled to any benefits they may be eligible to receive under Section 27-140 and the Social Security Act. CONN. GEN. STAT. § 45a-731(8)-(9) (2025) ("Effects of final decree of adoption. Surviving rights.").

[75] In the case of children conceived and born after the death of the decedent, Section 45a-785 lays out the requirements for their entitlement to a share of the decedent's estate. CONN. GEN. STAT. § 45a-785 (2025) ("Property rights of child of decedent conceived and born after death of decedent.").

[76] CONN. GEN. STAT. § 45a-438(a) (2025).

[77] CONN. GEN. STAT. § 45a-439(a)(1) (2025) ("Distribution when there are no children or representatives of them."). The exception to this rule prohibits distribution to any "parent who has abandoned a minor child and continued such abandonment until the time of death." *Id.*

[78] CONN. GEN. STAT. § 45a-439(a)(2) (2025).

[79] CONN. GEN. STAT. § 45a-439(a)(3) (2025).

[80] CONN. GEN. STAT. § 45a-439(e) (2025).

[81] CONN. GEN. STAT. § 45a-446 (2025) ("Distribution when heir, legatee or distributee is presumed to be dead. Liability of fiduciary").

[82] CONN. GEN. STAT. § 45a-452 (2025) ("When property escheats to the state. Procedure").

[83] CONN. GEN. STAT. § 3-64a (2025) ("Property presumed abandoned generally").

[84] CONN. GEN. STAT. § 3-63a (2025) ("Property in decedent's estate presumed abandoned, when").

decline to receive any property the value of which is less than the cost of giving notice or holding sale, or may postpone taking possession until a sufficient sum accumulates."[85] Here, a possible path for reclaiming seized property exists, as "[a]ny person claiming an interest in [such abandoned property] may claim such property, or the proceeds from the sale thereof, at any time thereafter."[86] To do so, such person must file a certified claim with the Treasurer, which the Treasurer must consider within ninety days of filing, and whose decision may be appealed.[87]

There are two circumstances that permit the Treasury to make a direct payment. The first is if the abandoned property is valued at less than $500 total, and "the decedent's estate was closed more than one year prior to the discovery of the relevant unclaimed property."[88] The second is when the property is worth less than $2,500, and the Treasurer determines that the claimant is the sole owner of such property.[89]

II. TWENTIETH CENTURY FORFEITURE

Connecticut courts have applied Sections 54-33g and 54-36h in greater depth than the other two statutes—partly because Sections 54-36o and 54-36p were non-existent until about a decade *post*-CAFRA, and partly because they are the broadest in scope. As such, Part II(A) considers only the former set of statutes. The relationship between Section 54-33g and Section 54-36h has been an issue consistently raised to state courts and has thus become the basis of Connecticut CAF law.

In Part II(B), I review the Supreme Court's holdings on CAF. The Court's holdings on CAF controversies from other states have, at times, spoken anticipatorily to cases soon after decided within Connecticut.[90] As with all areas of law, *stare decisis* requires at least an elementary overview of these past decisions, even if later overruled, to contextualize both courts' reasoning in their contemporary decisions.

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[85] CONN. GEN. STAT. § 3-65a(f) (2025) ("Duties of holder of abandoned property.").

[86] CONN. GEN. STAT. § 3-70a(a) (2025) ("Claims for abandoned property.").

[87] CONN. GEN. STAT. § 3-70a(a)-(b) (2025).

[88] CONN. GEN. STAT. § 3-70a(g)(2) (2025).

[89] CONN. GEN. STAT. § 3-70a(f) (2025).

[90] In one case where the defendant claimed that seizure and petition for forfeiture would "violate the state and federal constitutions' proscriptions against excessive fines and cruel and unusual punishments," the Court nonetheless denied his motion to dismiss because "[e]ven though respondent may be correct in some of his claims of law, the court has jurisdiction to proceed in this matter." State v. Proulx, No. 531738, 1995 WL 80087, at *1–2 (Conn. Super. Ct. Feb. 16, 1995). *Cf.* Austin v. United States, 509 U.S. 602 (1993) (holding that forfeiture could be considered punishment and could fall under the Eighth Amendment prohibition against excessive fines). *But see* United States v. Ursery, 518 U.S. 267, 292 (1996) (holding that "*in rem* civil forfeitures are neither 'punishment' nor criminal for purposes of the Double Jeopardy Clause.").

A. *Connecticut Case Law*

1. *Under One Statute*

Following the judicial tradition of *in rem* proceedings, Connecticut courts have long held that an owner's innocence in the criminal offense bears no weight on their forfeiture determination.[91] It does not matter whether the owner is a defendant in the related criminal matter—so long as they were properly notified and made a defendant in the CAF proceeding, the court is within its power to order the property forfeited.[92] Because courts strictly construe forfeiture statutes,[93] procedural due process is determinative of an owner's ability to reclaim their seized property. However, this raises another critical question: does the state's due process requirement to provide notice extend to an owner's heirs?[94]

In a 1978 case, the Connecticut Supreme Court appears to address the claim of a successor in interest—holding that "[e]ven though state seizure of the property may effectively remove the property from the claims of its owners, *or those who take under its owners*, the state's claim is incomplete and hence inchoate until forfeiture has been adjudicated after interested parties have had an opportunity to be heard."[95] However, this case dealt with competing claims between the state and federal governments to currency that had not yet been ordered forfeited at the time the claims arose.[96] In fact, the *in rem* proceedings saw both criminal defendants disclaim the currency.[97] Thus, the federal government's claim was dependent on proving that the currency was, in fact, the property of the criminal defendants.[98] The case does not address whether the currency was properly forfeited.

The Appellate Court next addressed a claim of a successor in interest in

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[91] *See, e.g.*, *In re* One 1960 Mercury Station Wagon, 240 A.2d 99, 104 (Conn. Cir. Ct. 1968) ("We hold that since the 'owner parts with *possession* at his peril' innocence of the owner is immaterial in this in rem proceeding." (citation omitted)). *But see* United States v. Grundy, 7 U.S. 337, 351 (1806) ("Where a forfeiture is given by a statute, the rules of the common law may be dispensed with, and the thing forfeited may either vest immediately, or on the performance of some particular act, shall be the will of the legislature. This must depend upon the construction of the statute.").

[92] *In re* One 1960 Mercury Station Wagon, 240 A.2d at 105. ("It is evident from the language of the statute that the word 'defendant' . . . means a defendant in the in rem proceeding, not a defendant in the substantive criminal prosecution.").

[93] *See* State v. Sabia, 471 A.2d 673, 674–75 (Conn. App. Ct. 1984) (holding that the trial court erred in ordering forfeiture of property seized without a warrant, as required by statute).

[94] At the time that *In re* One 1960 Mercury Station Wagon was decided, Section 54-33g provided only that notice must be provided to "the owner and all others whom it may concern." 1965 Conn. Pub. Acts 244 (Spec. Sess.). This language is ambiguous as to a property owner's heirs.

[95] State v. Bucchieri, 407 A.2d 990, 996 (Conn. 1978) (emphasis added).

[96] *Id.* at 994 ("Did the state's claim to the seized currency immediately become choate at the time of the institution of the *in rem* proceeding on February 1, 1972, so as to antedate the federal tax lien that attached on June 28, 1972; or did it first become choate after the hearing on the *in rem* proceeding on April 26, 1973, and thus postdate the federal lien?").

[97] *Id.* at 993.

[98] *Id.* at 997.

the 1988 case *In re One 1981 BMW Auto.*[99] There, the court held that a transfer of ownership in property does not exempt the property from being subject to Connecticut forfeiture statutes if the transfer is made for the purpose of purging the "criminal taint" of its past use.[100] However, this also does not address our questions regarding the *involuntary* claim of property prior to any forfeiture determination.

Connecticut courts' interpretation of Section 54-33g has unsurprisingly guided the changes made by the legislature. For example, the 1984 amendment subjecting property seized through a warrantless arrest to forfeiture followed shortly behind the 1984 case *State v. Sabia*, which limited forfeitures under the statute to property seized under a search warrant.[101] Although the legislative overturn of *Sabia* does not negate the judicial principle of strict construction of forfeiture statutes,[102] later courts have seemingly adopted more liberal interpretations of the language therein.[103]

Unsurprisingly, the legislature's changes have also heavily influenced court rulings. Beyond the judicial consideration of legislative intent, the court in *State v. Solters* appears to have been indirectly referencing the provision permitting the use of seized property as evidence in any criminal proceeding in denying the return of the owner-defendant's property while dismissing the *in rem* proceeding due to improper summons.[104]

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[99] *In re* One 1981 BMW Auto. (*BMW II*), 546 A.2d 879, 881–82 (Conn. App. Ct. 1988). This appeal followed a trial court ruling granting a motion to dismiss a second *in rem* proceeding brought after the first was dismissed for lack of personal jurisdiction in *BMW I* discussed at note 102

[100] *BMW II*, 546 A.2d at 884. In *BMW II*, the transfer of property was made by the criminal defendant to his lawyer after representation in the underlying criminal proceeding had begun. *Id.*

[101] *See In re* One 1977 Buick Auto., 493 A.2d 874, 879 (Conn. 1985) ("In explaining the need for this seeming expansion of the scope of § 54–33g to nonwarrant situations, the sponsor of the amendment appeared to be concerned about the effect of *State v. Sabia*, supra, when he referred to 'a decision . . . which *changes* the process of notification for the defendant and lays out certain procedures which must be followed.' (emphasis added.) 27 H.R.Proc., Pt. 15, 1984 Sess., p. 5359 (remarks of Rep. Alfred J. Onorato).").

[102] *In re* One 1981 BMW Auto. (*BMW I*), 500 A.2d 961, 963 n.4 (Conn. App. Ct. 1985) ("We do not, however, regard that legislative declaration as a renunciation of the principle of strict construction of forfeiture statutes long held in this and most other jurisdictions.").

[103] *See In re* One 1976 Chevrolet Van, 562 A.2d 62, 65–66 (Conn. App. Ct. 1989) (holding that the provision requiring the show-cause hearing to be held within a set time frame is "directory, not mandatory," and does not violate due process because "[a] rigid construction of the time frame provision would permit an owner of seized property to defeat the forfeiture on grounds, legitimate or otherwise, that require delay or continuance of the hearing beyond the twelve day limit.").

[104] State v. Solters, No. CR94-159216, 1995 WL 476783, at *2–3 (Conn. Super. Ct. Aug. 8, 1995) ("By its ruling, the court does not mandate that these items be admitted as evidence in the defendant's trial. Rather, this ruling is limited to denying the defendant's motion to have his property returned to him at this time. . . . In the absence of evidence upon which this court can conclude that the summons was validly issued, it has no choice but to dismiss the in rem proceedings."). At the time of the Court's ruling, the applicable provision read "[f]ailure of the state to proceed against such property in accordance with the provisions of this section shall not prevent the use of such property as evidence in any criminal trial." 1989 Conn. Acts 681 (Reg. Sess.). Such provision remained unchanged from its first appearance in 1965 Conn. Pub. Acts 245.

2. *And Then There Were Two*

The enactment of a separate CAF statute governing controlled substances led to opposite outcomes in seemingly similar cases. The court in *BMW I* held that forfeiture proceedings must meet the same personal jurisdiction requirements as other civil proceedings.[105] A later court held that "[a]bsent a specific statutory requirement that the state serve process on those persons identified by the court as owners or interested persons, *in personam* jurisdiction over those persons is not necessary."[106] These decisions are not in conflict because at the time the cases were decided, Section 54-33g required the court to issue and properly serve a signed summons,[107] while Section 54-36h merely required that the State give notice via certified mail.[108]

Shortly after this ruling, notwithstanding the fact that the statute had not changed, the court reached a conclusion that extends the State's notice obligation to property owners. "Although 54-36h(b) does not explicitly provide for any other or alternative mode of notice, forfeiture actions under the statute are 'civil suits in equity,'" thus "the general, civil procedures regarding applications for orders of notice are applicable and [] the Court may exercise its equitable power to issue supplemental orders of notice reasonably calculated to inform interested parties of their rights."[109] Indeed, where the forfeiture statute is silent, courts have generally applied the procedural requirements of the Connecticut General Statutes.[110]

Shifts in the public perception of the War on Drugs also affected the

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[105] *See BMW I*, 500 A.2d at 964 (holding that a blank summons fails to comply with Section 54-33g). *See also* Solters, 1995 WL 476783, at *3 (dismissing forfeiture action due to lack of evidence that the summons was validly issued by a judge).

[106] *In re* $3,002.40, No. 63647, 1992 Conn. Super. LEXIS 1135, at *7 (Conn. Super. Ct. Apr. 28, 1992).

[107] 1984 Conn. Acts 960 (Reg. Sess.) ("[T]he judge or court issuing the warrant . . . [shall] cause to be left with the owner . . . a summons notifying [them] to appear . . . . Such summons may be signed by a clerk of the court or his assistant and service may be made by a local or state police officer.").

[108] 1989 Conn Acts 678 (Reg. Sess.) ("The court shall . . . order the state to give notice to such owner and any interested person by certified or registered mail"). It should be noted that in drafting the amendment, the then Chief State's Attorney "suggested that the statute be amended to provide that 'If the court is unable to identify such owner or interested person, the court shall order the State to give notice by publication in a newspaper having at least county-wide distribution.' Conn. Joint Standing Committee Hearing, Judiciary, Pt. 4, 1989 Sess., p. 1359." *In re* $1,014.00, Nos. CV 9500509, CV 9500523, CV 9500525, CV 9500513, CV 9500530, CV 9500531, CV 9500532, CV 9500515, 1995 Conn. Super. LEXIS 3732, at *10 (Conn. Super. Ct. July 10, 1995). However, the legislature ultimately declined to adopt this suggestion. *Id.*

[109] *In re* $1,014.00, 1995 Conn. Super. LEXIS 3732, at *4, *9.

[110] *See id.* at *9 ("[I]n accordance with settled principles of statutory construction, the court must presume that the legislature intended to create a harmonious body of law so that when no direct conflict exists, forfeiture actions under 54-36h should be prosecuted in a manner consistent with the law and procedures governing equitable proceedings generally"); *In re* 79 Lake Ave., 31 17 01, 31 17 03, 1996 Conn. Super. LEXIS 2956, at *8 (Conn. Super. Ct. Nov. 12, 1996) ("In the absence of any controlling statutory or appellate authority . . . the court is constrained to apply the principles governing civil actions.").

legislature and the intent behind the 1989 changes to Section 54-36h,[111] which similarly led to opposite outcomes in similar cases. Although the court had previously held that the provision in Section 54-33g requiring the show-cause hearing to be held within a set time frame is directory, not mandatory, and does not violate due process,[112] it later held that under Section 54-36h, "[t]imely filing [of the forfeiture petition] is a jurisdictional prerequisite to the court's competence."[113]

Legislative intent to "preserve some rights of the citizen against the government"[114] further manifests itself in the State's burden of proof under the statute[115] and in the court's strict construction of the clear and convincing standard.[116] In another case, *In re One 1982 Gray Nissan Automobile*, the court took the enactment of a separate statutory scheme for drug-trafficking-related forfeitures in Section 54-36h—specifically the heightened burden of proof—as reason to effectively narrow the scope of Section 54-33g.[117] It found that "Section 54-33g requires a greater nexus than 'facilitation' between the property sought to be forfeited and the alleged violation of State law."[118]

While the legislature and judiciary are reciprocally influenced by each other, at times one foreshadows the other. For example, a property owner's innocence may not be a defense to CAF at common law,[119] but it *is* sufficient to stay a Section 54-36h *in rem* proceeding pending disposition of the related criminal prosecution.[120] Though the court's reasoning for holding as much

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[111] *In re* $1970, 648 A.2d 917, 920 (Conn. Super. Ct. 1994) ("Representative Richard D. Tulisano, recognizing that the federal legislation had 'gone over the edge,' stated that Connecticut's drug asset forfeiture bill was 'designed . . . to go to the edge.' 32 H.R.Proc., Pt. 20, 1989 Sess., p. 6934. 'What we have done in this bill is try to attempt to preserve some rights of the citizen against the government and that is why that section [on the hearing process] is in there and it reflects some lower court decisions at the federal court level.' Id., p. 6938.").

[112] *In re* One 1976 Chevrolet Van, 562 A.2d 62, 65–66 (Conn. App. Ct. 1989).

[113] *In re $1970*, 648 A.2d at 921.

[114] *Id.* at 920.

[115] As mentioned in Part I(A), the clear and convincing standard that the state must meet was first enacted in P.A. 89-269.

[116] *See In re* $445.00, No. 16-345AF, 1994 Conn. Super. LEXIS 1909, at *12 (Super. Ct. July 26, 1994) ("To be forfeited pursuant to C.G.S. 54-36h(a)(2), money must be linked, by clear and convincing evidence, to the sale of narcotics, not merely to *some* illegal activity.").

[117] *In re* One 1982 Gray Nissan Automobile, 1998 Ct. Sup. 8671, 8676 (Conn. Super. Ct. 1998) (interpreting the legislature's intent in amending Section 54-36h rather than Section 54-33g).

[118] *Id. See also In re* One 1985 Gray Buick Auto. (Mathis), No. CR 14432860A, 1998 WL 518610, at *2 (Conn. Super. Ct. Aug. 11, 1998) (finding that "[d]riving around the block two or three times is an insufficient nexus between the defendant vehicle and the crime of solicitation of prostitution to justify forfeiture").

[119] However, the legislature may, in its discretion, statutorily provide an innocent owner defense. *See* United States v. Grundy, 7 U.S. 337, 351 (1806) ("Where a forfeiture is given by a statute, the rules of the common law may be dispensed with, and the thing forfeited may either vest immediately, or on the performance of some particular act, shall be the will of the legislature. This must depend upon the construction of the statute.").

[120] *In re* One 1987 Hyundai Excel Auto., No. CV92-524721, 1993 Conn. Super. LEXIS 48 (Super. Ct. 1993).

is entirely different, adjudicating the CAF proceeding *after* the criminal proceeding is the most significant change later made by the 2017 legislative overhaul of Connecticut's CAF statutes. The importance of this change cannot be understated. In *State v. .2 Acres Known as 319 Jackson Street, Willimantic*, the Appellate Court held that the trial court improperly ordered forfeiture and remanded with direction to grant the defendant's motion to set aside the judgment.[121] Had the *in rem* proceeding not been commenced at the same time as the criminal prosecution,[122] under the 2017 statute, it would not have occurred at all.[123]

B. *Federal Case Law*

Pursuant to the hierarchy of courts in our judicial system, federal case law also provides limits to the reach of CAF in our state—particularly regarding constitutional issues.

1. *Due Process*

Connecticut courts follow the U.S. Supreme Court in recognizing "two instances in which [forfeiture] statutes might violate substantive due process."[124] In *Calero-Toledo v. Pearson Yacht Leasing Co.*, the Supreme Court noted that "an owner whose property subjected to forfeiture had been taken from him without his privity or consent . . . [and] an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property" present two situations in which such constitutional claims would be difficult to reject.[125] However, as such possible exceptions are dicta,[126] Connecticut courts did not find them to be controlling.[127] *Calero-Toledo* is interpreted as holding more broadly that, in extraordinary situations, postponement of notice and hearing until after

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[121] *In re* 319 Jackson Street, 663 A.2d 1115, 1117 (Conn. App. Ct. 1995).

[122] *Id.* at 1116.

[123] *Id.* at 1116 n.3 ("On the same day [that the forfeiture was ordered], the trial court dismissed with prejudice the criminal charges against the defendant."). *See* 2017 Conn. Acts 919 (Reg. Sess.) (requiring that the court "return the property to the owner if the criminal proceeding does not result in" a guilty plea or verdict).

[124] State v. Connelly, 483 A.2d 1085, 1087 n.4 (Conn. 1984) (citing *Calero-Toledo*, *infra* note 125, at 689).

[125] Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 689–90 (1974). This second exception was later codified in CAFRA. *See* 18 U.S.C. § 983(d)(2)(A) (defining the term "innocent owner" as someone who either "did not know of the conduct giving rise to forfeiture" or as someone who "upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.").

[126] The Court in *Calero-Toledo* did not find that the property owner met either possible exception and upheld the forfeiture. *Calero-Toledo*, 416 U.S. at 690.

[127] State v. Gaudio, 562 A.2d 1156, 1158 (Conn. App. Ct. 1989) (noting that the parties could not provide the court with any similar case where the language in *Calero-Toledo* was found to be controlling).

seizure does not deny the owner due process.[128]

Because forfeiture of real property was not authorized until ten years after this holding, the Court in *Calero-Toledo* considered only seizures of movable personal property.[129] To determine whether an exception exists for seizures of real property, the Court applied the due process analysis set forth in *Mathews v. Eldridge*[130] and affirmed *Calero-Toledo* with regard to real property.[131] "To establish exigent circumstances, the Government must show that less restrictive measures . . . would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property."[132]

Under common law, the government does not acquire title to property automatically upon seizure.[133] Once property is seized, whether the government's delay in initiating a forfeiture proceeding violates due process is yet another constitutional issue raised in CAF jurisprudence.[134] To address this, the Court adopted the *Barker v. Wingo* balancing test developed to determine when government delay has abridged the right to a speedy trial.[135] "The *Barker* test involves a weighing of four factors: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant."[136] While no factor is determinative, the length of the delay

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[128] In determining whether such an extraordinary situation exists, the Court considered (1) whether the seizure "serves significant governmental purposes," such as preventing the continued illicit use of the property and enforcing criminal sanctions; (2) whether pre-seizure notice and hearing might frustrate the public interest if the property seized is of the "sort that could be removed to another jurisdiction, destroyed, or concealed, if advance warning of confiscation were given;" and (3) whether seizure is initiated not by "self-interested private parties," but by public officials who have determined the appropriateness of seizure under the applicable statutory provisions. *Calero-Toledo*, 416 U.S. at 678–80.

[129] United States v. James Daniel Good Real Prop., 510 U.S. 43, 52–53 (1993).

[130] *Id.* at 53 ("The *Mathews* analysis requires us to consider the private interest affected by the official action; the risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards; and the Government's interest, including the administrative burden . . . .") (citing Mathews v. Eldridge, 424 U.S. 319, 335 (1976)).

[131] *James Daniel Good Real Prop.*, 510 U.S. at 62 ("Unless exigent circumstances are present, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture.").

[132] *Id.* Specifically, the Court identifies a *lis pendens*, a restraining order, or a bond as an appropriate, less restrictive means. *Id.*

[133] United States v. Grundy, 7 U.S. 337, 350–51 (1806) ("[I]n all forfeitures accruing at common law, nothing vests in the government until some legal step shall be taken for the assertion of its right, after which, for many purposes, the doctrine of relation carries back the title to the commission of the offence.").

[134] It should be noted that the legislature may overrule the common law if the statute authorizing forfeiture provides that title vests immediately or upon the performance of a particular act. *Id.* Nonetheless, absent any specific relation back provision in the applicable statute, "forfeiture constitutes a statutory transfer of the right to the United States *at the time the offence is committed*; and the [judicial] condemnation, when obtained, relates back to that time, and avoids all intermediate sales and alienations, even to purchasers in good faith." *In re* 92 Buena Vista Ave., 507 U.S. 111, 126–27 (1993) (emphasis added) (emphasis omitted).

[135] *In re* $8,850 U.S. Currency, 461 U.S. 555, 564 (1983)

[136] *Id.*

is generally considered the triggering factor.[137] Of course, whether the delay is reasonable depends on the second factor, under which the Court considers whether the government acted with all due speed.[138] "Only unjustified delay raises a due process concern and then only when the delay is excessive and [the] claimant can demonstrate prejudice."[139] Likewise, under the third factor, a defendant must also act with all due speed.[140] The fourth factor, prejudice, weighs heavily on the reasonableness of the delay.[141] However, if the applicable statute contains a statute of limitations, and the action is brought within such a timeframe, failure of the government to comply with internal timing requirements is not grounds for dismissal of the forfeiture action.[142]

2. *Double Jeopardy and Excessive Fines*

In addition to questions of due process, concerns that CAF is a byproduct of criminal prosecution have often raised double jeopardy considerations under the Fifth Amendment. The distinction between civil and criminal proceedings is one that the Supreme Court emphasizes while addressing this issue. "In contrast to the *in personam* nature of criminal actions, actions *in rem* have traditionally been viewed as civil proceedings, with jurisdiction dependent upon seizure of a physical object."[143] Thus, the Court considers both legislative intent and the purpose and effect of the applicable statute in determining whether the forfeiture is civil and remedial, or criminal and punitive in nature, applying the bar on double jeopardy only

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[137] Barker v. Wingo, 407 U.S. 514, 530–31 (1972) ("Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance."). *Compare In re* $8,850 U.S. Currency, 461 U.S. at 565 ("We regard the delay here—some 18 months—as quite significant."), *with In re* One 1976 Chevrolet Van, 562 A.2d 62, 66 (Conn. App. Ct. 1989) ("A six month delay from the date of the seizure to the date of the hearing has been held to be so short that due process analysis is not even triggered.").

[138] *See In re $8,850 U.S. Currency,* 461 U.S. at 568 ("[T]he Government's diligent pursuit of pending administrative and criminal proceedings indicate strongly that the reasons for its delay in filing a civil forfeiture proceeding were substantial.").

[139] *In re One 1976 Chevrolet Van*, 562 A.2d at 66 (quoting *In re* $199,514.00 U.S. Currency, 681 F. Supp. 1109, 1111 (E.D. N.C. 1988)) (alteration in original).

[140] *Id.* at 67 ("A failure diligently and timely to pursue this right will weigh against a defendant in the balancing test.") (citing *In re $8,850 U.S. Currency,* 461 U.S. at 569).

[141] *In re $8,850 U.S. Currency,* 461 U.S. at 569. *See also One 1976 Chevrolet Van*, 562 A.2d at 67 ("This is probably the most important element . . . because without any prejudice there is no injury to the claimant.") (quoting *In re $199,514.00 U.S. Currency*, 681 F. Supp. At 1111).

[142] *James Daniel Good Real Prop.*, 510 U.S. at 65 (1993).

[143] *In re* One Assortment of 89 Firearms, 465 U.S. 354, 363 (1984). While this has been taken to mean that a valid seizure of the property is a prerequisite to the initiation of an *in rem* proceeding, continuous possession is not necessary to maintain jurisdiction. Republic Nat'l Bank of Miami v. United States, 506 U.S. 80, 84–85 (1992). Rather, "the court must have actual or constructive control of the [property] when an *in rem* forfeiture suit is *initiated*. If the seizing party abandons the attachment *prior* to filing an action, it, in effect, has renounced its claim." *Id.* at 87 (second and third emphasis added).

in the latter circumstance.[144]

While determining intent is a matter of statutory interpretation, "[o]nly the clearest proof that the purpose and effect of the forfeiture are punitive will suffice to override [legislative intent] for a civil sanction."[145] Applying the factors established in *Kennedy v. Mendoza-Martinez*,[146] the Court has held that "neither collateral estoppel nor double jeopardy bars a civil, remedial forfeiture proceeding initiated following an acquittal on related criminal charges."[147] That forfeiture is connected to a criminal violation is, by itself, insufficient to show that the proceeding is criminal.[148]

Unlike with double jeopardy, whether the proceeding is civil or criminal is not determinative of whether forfeiture violates the Eighth Amendment's bar on excessive fines.[149] In light of the historical understanding of *in rem* forfeiture as punishment,[150] this is a question of statutory interpretation.[151] The Court expressly declined to establish a test for determining whether a forfeiture is constitutionally "excessive," leaving that question to the lower courts.[152] Connecticut courts have looked to Justice Scalia's concurrence in *Austin v. United States*, which posits that "[t]he question is not *how much* the confiscated property is worth, but *whether* the confiscated property has a close enough relationship to the offense."[153]

Both inquiries, however, are applicable beyond the issue of excessive fines. In the broader context of CAF, "where the Government has the power

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[144] *In re One Assortment of 89 Firearms*, 465 U.S. at 362 ("Unless the [civil] forfeiture sanction was intended as . . . criminal in character, the Double Jeopardy Clause is not applicable.") (citation omitted).

[145] *Id.* at 365 (internal quotation omitted).

[146] These factors are whether (1) "the sanction involves an affirmative disability or restraint," (2) "it has historically been regarded as a punishment," (3) "it comes into play only on a finding of *scienter*," (4) "its operation will promote the traditional aims of punishment," (5) "the behavior to which it applies is already a crime" (6) "an alternative purpose to which it may rationally be connected is assignable for it," and (7) "it appears excessive in relation to the alternative purpose assigned." Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168–69 (1963). However, the Court later noted that the list was "neither exhaustive nor dispositive." *In re One Assortment of 89 Firearms*, 465 U.S. at 365 n.7 (citation omitted).

[147] *In re One Assortment of 89 Firearms*, 465 U.S. at 361.

[148] United States v. Ursery, 518 U.S. 267, 292 (1996).

[149] Austin v. United States, 509 U.S. 602, 609–10 (1993) ("The purpose of the Eighth Amendment . . . was to limit the government's power to punish. . . . '[Punishment] cuts across the division between the civil and the criminal law.' . . . Thus, the question is not . . . whether forfeiture . . . is civil or criminal, but rather whether it is punishment.") (quoting United States v. Halper, 490 U.S. 436, 447–48 (1989).

[150] *Id.* at 618 ("We conclude, therefore, that forfeiture generally and statutory *in rem* forfeiture in particular historically have been understood, at least in part, as punishment.").

[151] In particular, the Court has considered whether the applicable statute provides an "innocent owner defense," whether forfeiture is triggered by a criminal offense, and whether the legislature intended the statute to serve as deterrence and punishment. *Id.* at 619–20 ("These exemptions serve to focus the provisions on the culpability of the owner in a way that makes them look more like punishment, not less.").

[152] *Id.* at 622–23.

[153] State v. Proulx, No. 531738, 1995 WL 80087, at *2 (Super. Ct. Conn. Feb. 16, 1995) (quoting *Austin*, 509 U.S. at 628 (Scalia, J., concurring) (emphasis in original)).

to confiscate private property on a showing of mere probable cause,"[154] and the disproportionate impact the criminal justice system has on race-class subjugated communities, the seizure of high-value property with a low nexus to illicit activity is a danger to socioeconomic equity. Thus, the ability to reclaim such property may lend itself as relief and is worth discussing in pursuit of equity.

III. STATUTORY REFORM AT THE FEDERAL AND STATE LEVEL

A. *Federal: Civil Asset Forfeiture Reform Act of 2000*

Enacted in 2000, CAFRA serves in some ways as the culmination of the War on Drugs—and in other ways as a continuation. Its provisions largely fall into two categories: expansions and safeguards. The Supreme Court's influence is evident—in some provisions, Congress appears to pull directly from the Court's opinion.[155] However, it is also clear that the legislature was keen to address common constitutional and equity critiques that were gaining traction at the time, independent of the Court.

1. *Expansions*

Traditionally, forfeiture had been promoted to target crimes that threatened the government's revenue interest and crimes that are considered a public nuisance,[156] but its profitability was never a secret. Thus, CAFRA extends federal forfeiture as applicable to crimes that are lucrative in nature, like racketeering and money laundering.[157] It also makes forfeitable property in the U.S. that was "derived from or used to facilitate various crimes committed in violation of *foreign law* overseas."[158] Due to the nature of the drug trade, the list provided under this section overlaps with the list of racketeering predicate offenses.

2. *Safeguards*

Importantly, CAFRA statutorily preserves the innocent owner defense[159] that the common law rejects.[160] The law holds owners to a variable

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[154] Republic Nat'l Bank of Miami v. United States, 506 U.S. 80, 92 (1992).

[155] *Compare* 18 U.S.C. § 983(d)(2)(A) (codifying the innocent owner defense), *with* Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 689 (1974) (noting a common law basis for such a defense).

[156] *See* CHARLES DOYLE, CONG. RSCH. SERV., RL97139, CRIME AND FORFEITURE 4 (2023) (describing the types of crimes that traditionally triggered forfeiture proceedings).

[157] 18 U.S.C. § 981(a)(1)(C) ("Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of . . . any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense."); *see* 18 U.S.C. § 1956(c)(7) (listing the predicate offenses for a Racketeer Influenced and Corrupt Organizations (RICO) charge).

[158] DOYLE, *supra* note 156, at 5 (emphasis added); *see* 18 U.S.C. § 1956(c)(7)(B) ("[W]ith respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving [list of felonies].").

[159] 18 U.S.C. § 983(d).

[160] *See* cases cited *supra* note 91.

preponderance of the evidence standard.[161] If their ownership predates the offense, they must show that they had no knowledge of the illegal conduct, or that they did all that could be reasonably expected to prevent the property's misuse.[162] If the property interest was acquired after the offense, owners must show that they were good faith purchasers and were unaware that the property was subject to forfeiture.[163]

The legislature also expressly addresses the constitutionality of a forfeiture under the Excessive Fines Clause in two ways. First, it establishes a test for the Courts: "the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture."[164] In doing so, the legislature resolves the questions left open by the Court in *Austin*—proportionality is the proper inquiry to determine whether forfeiture is unconstitutionally excessive. However, unconstitutional excessiveness is not fatal to a forfeiture judgment—it can be remedied. Under CAFRA, if the claimant proves by a preponderance of the evidence that the forfeiture is grossly disproportional to the offense, the Court shall adjust the forfeiture as necessary to avoid excessiveness.[165]

Although there is no constitutional right to counsel in civil proceedings, CAFRA sets forth two circumstances in which indigent property owners and interest holders may be provided with legal representation in the forfeiture proceedings. First, if the claimant is represented by appointed counsel in a related criminal case, the Court may authorize counsel to represent them in the civil case.[166] Second, if the forfeiture concerns real property used by the claimant as their primary residence, then they may request an attorney from the Legal Services Corporation, the cost of which the Court would be responsible for.[167] This latter circumstance, where the property's forfeiture would render the claimant homeless, is also one under which CAFRA provides that a claimant is entitled to immediate release of the seized property.[168]

B. *Connecticut: P.A. 17-193*

As the title makes plain, P.A. 17-193 is "An Act Requiring a Criminal Conviction for Certain Offenses Before Assets Seized in a Lawful Arrest or

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[161] 18 U.S.C. § 983(d)(1).

[162] *Id.* § 983(d)(2)(A). This provision codifies the second possible due process violation that the Court noted in Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 689–90 (1974).

[163] 18 U.S.C. § 983(d)(3)(A).

[164] *Id.* § 983(g)(2).

[165] *Id.* § 983(g)(3)–(4).

[166] *Id.* § 983(b)(1)(A). Such authorization is subject to the factors in subsection 983(b)(1)(B).

[167] *Id.* § 983(b)(2)(A)–(B)(i).

[168] 18 U.S.C. § 983(f)(1). Additional circumstances considered to "cause substantial hardship to the claimant" which entitle the claimant to the immediate release of seized property include situations that "prevent[] the functioning of a business" and "an individual from working." *Id.*

Lawful Search May Be Forfeited in a Civil Proceeding."[169] P.A. 17-193 standardized forfeiture proceedings by adding the same provision to all four CAF statutes. As a result, forfeiture hearings are now required to be held *within* two weeks of the disposition of the criminal proceeding stemming from the requisite arrest,[170] as opposed to *at least* two weeks *after* notice is given. Under the reform statute, the state's petition must be denied if the criminal proceeding does not result in a nolo contendere plea, a guilty plea, a guilty verdict, or a post-diversionary program dismissal.[171]

While the arrest requirement is uniform across all four CAF statutes, P.A. 17-193 does make one change to Section 54-33g not found in the other statutes—that seized property shall be returned to its owner if the court finds the allegations to false, *regardless of the findings in the criminal proceedings*.[172]

Being civil in nature, there are no guilty or innocent rulings in CAF proceedings. As discussed, the application of CAF proceedings has not only created its own injustice, but it further compounds the subjugation of communities already over-policed. In some ways, such injustice has been purposefully written into the CAF statutes. P.A. 17-193 was thus enacted in 2017 both as a remedial measure for the past harm of CAF itself, and in response to shifting tides in attitudes toward punitive public policy.

IV. FORFEITURE IN THE NEW MILLENNIUM

A. *Connecticut Case Law*

Because no case law appears under either Section 54-36o or 54-36p,[173] we again look to Sections 54-33g and 54-36h as the basis of Connecticut CAF jurisprudence.

1. *Before State Reform*

This section will briefly describe key components of forfeiture proceedings as they were prior to state reform.

Proper seizure. Between the enactment of CAFRA and P.A. 17-193, many of the courts' CAF decisions turned on the "clear and convincing" standard for forfeiture.[174] Those that clarified or modified the applicable law

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[169] 2017 Conn. Acts 919 (Reg. Sess.).

[170] *See* 2017 Conn. Acts 919 § 1(b) (Reg. Sess.) (repealing and replacing section 54-33g); *id.* at 922–24 §§ 2(c), 3(c), 4(c) (repealing and replacing section 54-36h).

[171] *Id.*

[172] 2017 Conn. Acts 920–21 § 1(f) (Reg. Sess.).

[173] This is true at the time of writing this Article. These sections were enacted within the past 15 years, and it may very well be the case that any proceedings pursuant to these sections may simply not have necessitated an opinion in the court's view.

[174] *See e.g.*, *In re* $7,379.54 U.S. Currency, No. CV990080097, 2002 WL 1540026 (Conn. Super. Ct. June 12, 2002) (finding claimant's argument uncompelling in light of extrinsic evidence); *In re*

were largely brought pursuant to Section 54-36h. The sole case considering Section 54-33g stands to affirm that seizure does not need to be pursuant to a warrant—the statute requires only that seizure be the result of a lawful arrest or search.[175]

Attorneys' fees. While the exemption under Section 54-36h for attorneys' fees does not provide the owner a wholesale ability to exempt *all* property that would be subject to forfeiture,[176] "funds already seized are subject to the exemption, and that the intent to use the funds [for attorneys' fees] may be formed after their seizure."[177] Courts have also rejected the argument that a claimant must exhaust personal, non-seized resources before claiming the exemption.[178] The exemptions provided in Section 54-36h, however, do not "extend to property that has been seized simultaneously with drugs, incident to a drug sales arrest."[179] Unlike seized property, "seized contraband does not require *in rem* forfeiture proceedings."[180]

Timely filings. Forfeiture petitions may also face challenges regarding the timing of filing. Although "[t]imely filing is a jurisdictional prerequisite to the court's competence to entertain the . . . in rem forfeiture,"[181] when a filing is untimely due to a clerical error, and not an error of the parties, the court must correct the error and is not deprived of jurisdiction.[182]

Donative transfers. While the law presumes transfers between a parent and child are intended gifts, this presumption is rebuttable, and a court has held that a promissory note to repay the value of property transferred is

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$7379.54 U.S. Currency, 844 A.2d 220 (Conn. App. Ct. 2003) (affirming the trial court's determination that the standard was met); *In re* One 2002 Chevrolet Coupe, No. CV2200243, 2003 WL 824266 (Conn. Super. Ct. Jan. 23, 2003) (holding that the standard was met regarding the seized currency but not the seized vehicle); *In re* One 2000 Chevrolet Silverado Pickup, No. CV042691, 2005 WL 2126415 (Conn. Super. Ct. July 25, 2005) (finding that undisputed material facts met the standard); *In re* 2005 Nissan Maxima, No. CV11820, 2013 WL 4504917 (Conn. Super. Ct. Aug. 8, 2013) (denying forfeiture where there is insufficient evidence to prove nexus with the underlying offense).

[175] *See* State v. Raffone, 136 A.3d 647, 652 n.9 (Conn. App. Ct. 2016) (interpreting Section 54-33g).

[176] *In re* $28,194.63 U.S. Currency, No. CR56977, 2001 WL 459121, at *5 (Conn. Super. Ct. Apr. 17, 2001) (explaining that to exempt property from forfeiture "the owner must have truly intended to use the money for legitimate attorneys fees; and [] the fees must have been accrued in connection with the owner's defense in a criminal prosecution.").

[177] *In re* $76,583 in U.S. Currency, No. CV08630, 2009 WL 323408, at *3 (Conn. Super. Ct. Jan. 8, 2009). This decision conflicts in part with *In re $28,194.63 U.S. Currency*, which had also previously held that the exemption only applied to property that had not yet been seized. *In re $28,194.63 U.S. Currency*, 2001 WL 459121, at *7.

[178] *See In re $76,583 in U.S. Currency*, 2009 WL 323408, at *3 (finding no requirement to exhaust alternative funds existed in the statute).

[179] *In re $28,194.63 U.S. Currency*, 2001 WL 459121, at *7.

[180] State v. Garcia, 949 A.2d 499, 511 (Conn. App. Ct. 2008).

[181] *In re* $10,820.00 in U.S. Currency, No. CV00201AF, 2002 WL 853626, at *1 (Conn. Super. Ct. Apr. 10, 2002) (dismissing a claimant's forfeiture petition for their untimely filing in concurrence with *In re $1970,* 648 A.2d 917, 921 (Conn. Super. Ct. 1994)).

[182] *See In re* $4,753.00, No. CV2313983, 2007 WL 1121397, at *3 (Conn. Super. Ct. Apr. 3, 2007) (holding that a correctable clerical error did not eliminate the state's right to "full and fair hearing" on the petition.

sufficient to create a parental ownership interest sufficient to preclude forfeiture under Section 54-36h.[183]

2. *No Forfeiture Proceeding Required*

Following the enactment of P.A. 17-193, courts were quickly faced with several cases where the central issue was determining the proper forfeiture statute. While the act amended all the *civil* forfeiture statutes to require a disposition of the criminal proceeding prior to initiation of the *in rem* forfeiture proceedings, it did not amend Section 54-36a, which governs *criminal* forfeiture.[184] As such, the question of when Section 54-33g or Section 54-36a applies is of great significance for due process, as the latter statute does not require formal notice to any individual who may have an interest in the seized property.

In determining which statute governs, Connecticut courts consider the nature of the property in question. As discussed above, Section 54-33g provides for an *in rem* proceeding "to determine *whether* property has been used in violation of the law and is thus subject to forfeiture."[185] However, when property is seized *incident* to an arrest, the state is not *required* to initiate *in rem* proceedings, and Section 54-36a governs.[186] While the criminal statute only explicitly permits forfeiture of seized *contraband* and stolen property, "[s]o long as a nexus exists between the seized property and the crimes charged, it is irrelevant whether the property is contraband."[187]

Thus, there is a distinction between property seized incident to an arrest and property "seized *as a result of* a lawful arrest."[188] The civil statute applies only to property that the state claims to be a nuisance and desires to have disposed of in accordance with Section 54-33g.[189] However, "[w]hen seized property is adjudicated a nuisance, the court is not *required* to order the property returned to its rightful owner."[190] Even when Section 54-33g is applicable, its nuisance status may still permit the court to dispose of the seized property as it deems fit.

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[183] *See In re* One 1993 Dodge Daytona, No. CR193560, 2000 WL 728837, at *2 (Conn. Super. Ct. May 18, 2000) (holding that a child's promissory note to repay the value of a vehicle paid for by his parents resulted in a trust entitling the parents to an ownership interest which precluded the forfeiture of the vehicle).

[184] CONN. GEN. STAT. § 54-36a (2025) ("Definitions. Inventory. Return of stolen property. Disposition of other seized property. Return of compliance.").

[185] State v. Gaudio, 562 A.2d 1156, 1157 (Conn. App. Ct. 1989) (emphasis added).

[186] *See* State v. Perez, 162 A.3d 76, 82 (Conn. App. Ct. 2017) (holding that a revolver seized during an arrest was subject to section 54-36a and did not require an *in rem* proceeding).

[187] State v. Redmond, 171 A.3d 1052, 1058–59 (Conn. App. Ct. 2017) (clarifying the holding of *State v. Garcia*, 949 A.2d 499 (Conn. App. Ct. 2008)).

[188] CONN. GEN. STAT. § 54–33g(a) (emphasis added).

[189] *Id.*

[190] State v. Thompson, No. N23NCR160169881S, 2018 WL 5898966, at *2 (Conn. Super. Ct. Oct. 19, 2018) (emphasis added).

B. *Federal Case Law*

In the past twenty-five years, only two cases brought before the Supreme Court have substantively implicated CAF. *Timbs v. Indiana* and *Culley v. Marshall*, both decided in the past six years, provide the most recent interpretations of CAF and its limits across the nation.

1. *Timbs v. Indiana (2019)*

Prior to *Timbs v. Indiana*, the Court held that civil forfeiture is subject to the Excessive Fines Clause when it is at least partially punitive, but it purposefully left to the lower courts the task of establishing a multifactor test for determining whether a forfeiture is unconstitutionally excessive.[191] However, *Timbs* considers whether *state* CAF statutes are subject to the Excessive Fines Clause. In effect, the Court was asked to reconsider *Austin* for the states.

Constitutional protections are held to apply to the states under the Fourteenth Amendment if they are (1) fundamental to ordered liberty, or (2) deeply rooted in history and tradition.[192] The Court in *Timbs* rejected Indiana's argument that "the Clause's *specific application to [civil] forfeitures* is neither fundamental nor deeply rooted," holding that, because protection against excessive punitive economic sanctions meets this standard, the Excessive Fines Clause is applicable to the states.[193] In doing so, the Court also held that the incorporation of a constitutional protection is determined with respect to the right guaranteed, not a particular application of the right.[194]

2. *Culley v. Marshall (2024)*

Neither a postponement of a preliminary hearing to be held after seizure,[195] nor a delay in filing a forfeiture action,[196] inherently violates due process. However, in both *Calero-Toledo* and *In re $8,850*, the Court applied *different* multi-factor analyses to make its rulings.[197] This confusion was

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[191] Austin v. United States, 509 U.S. 602, 622–23 (1993).

[192] Timbs v. Indiana, 139 S. Ct. 682, 687 (2019).

[193] *Id.* at 689 (emphasis added).

[194] *Id*. at 690.

[195] *See* Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 678–80 (1974) (finding "considerations that justified postponement of notice and hearing").

[196] *In re* $8,850 in U.S. Currency*,* 461 U.S. 555, 564–65 (1982).

[197] In *Calero-Toledo*, the Court applied the *Fuentes* factors, asking (1) whether the seizure was "'directly necessary to secure an important governmental or general public interest,'" (2) whether there was "'a special need for very prompt action,'" and (3) whether "'the State has kept strict control over its monopoly of legitimate force.'" *Calero-Toledo*, 416 U.S. at 678 (quoting Fuentes v. Shevin, 407 U.S. 67, 91 (1972)). In deciding *In re $8,850*, the Court applied the *Barker* test, which "involves a weighing of four factors: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *In re $8,850*, 461 U.S. at 564 (citing Barker v. Wingo, 407 U.S. 514, 530 (1972)).

finally addressed by the Court in *Culley v. Marshall,* which asked whether due process requires a separate preliminary hearing in civil forfeiture cases.[198]

As aptly stated by Justice Gorsuch, "[t]he facts of this case are worth pausing over because they are typical of many."[199] Petitioner Halima Culley bought a car for her son, who was later pulled over and arrested for marijuana possession. The arresting officer seized the car, presuming it belonged to the Petitioner's son. Upon learning of its true owner, law enforcement did not return the car—rather, they initiated CAF proceedings hoping to keep the car. It took twenty months for the vehicle to be returned to Culley.[200]

In her arguments, Culley took the position that a preliminary hearing is "constitutionally necessary to determine whether States may retain seized personal property pending the ultimate forfeiture hearing."[201] The Court, however, characterized such a hearing as, essentially, an earlier forfeiture hearing.[202] Because "a timely 'forfeiture proceeding, without more, provides the postseizure hearing required by due process,' [the Court holds that] [n]o separate preliminary hearing is constitutionally required."[203]

The dissent in *Culley* highlights the key issue this holding presents: "law enforcement can seize [assets], hold them indefinitely, and then rely on an owner's lack of resources to forfeit those [assets] to fund agency budgets, all without any initial check by a judge as to whether there is a basis to hold the [assets] in the first place."[204] The harms of this holding will be felt the most by those who are already disproportionately affected by the justice system and CAF.

V. DISPARATE IMPACT ON RACE-CLASS SUBJUGATED COMMUNITIES

A. *The War on Drugs*

President Ronald Reagan declared the War on Drugs in 1982, allegedly in response to a rising crack cocaine epidemic, though its usage hadn't quite reached crisis levels until a few years after the war was declared.[205] This

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[198] Culley v. Marshall, 144 S. Ct. 1142, 1146 (2024).

[199] *Id.* at 1153 (Gorsuch, J., concurring).

[200] *Id*. at 1153–54 (Gorsuch, J., concurring).

[201] *Id.* at 1148.

[202] *Id.* ("[T]he preliminary hearing would focus on the 'probable validity' of the forfeiture . . . . [It] would be adversarial, the parties could introduce evidence and cross-examine witnesses, and property owners could raise affirmative defenses, including innocent ownership.") (citations omitted).

[203] *Culley*, 144 S. Ct. at 1150 (quoting United States v. Von Neumann, 474 U.S. 242, 249 (1986)). In *Von Neumann*, the Court interpreted *In re $8,850* in the context of a remission petition and posited that this statement was implicit in *In re $8,850*. *Von Neumann*, 474 U.S. at 249 n.7 (citing *In re* $8,850*,* 461 U.S. at 562 n.12).

[204] Culley v. Marshall, 144 S. Ct. 1142, 1161–62 (Sotomayor, J., dissenting).

[205] MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 6 (10th anniversary ed. 2020).

declaration marks the rise of the new penology—a wave of punitive criminal justice policies that focus on "the efficient control of internal system processes in place of the traditional objectives of rehabilitation and crime control."[206] Such policies, like stop-and-frisk, disproportionately impact poor communities and communities of color.[207]

Between 1980 and 1990, national drug arrests grew from 581,000 to 1,000,000.[208] By 1995, Maryland data showed that Black drivers were disproportionately searched during drug stops, even though Black and White drivers were equally likely to have narcotics in the car.[209] By 2000, New Jersey data showed that while Black and Hispanic drivers were more likely to be searched, White drivers were more likely to be found with narcotics.[210] Though civil forfeiture has roots tracing back to England, it wasn't until its use in the War on Drugs that law enforcement had a genuine profit motive.

1. *Federal Equitable Sharing*

The Comprehensive Forfeiture Act of 1984[211] provided for the transfer of seized property between state and local law enforcement and federal law enforcement.[212] Today, the two programs involved in federal equitable sharing—the Department of Justice Asset Forfeiture Program and the Department of the Treasury Asset Forfeiture Program—are authorized by several federal statutes.[213]

While each department has its own decision-making authorities, the federal share of forfeited property is generally determined by the extent of

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[206] AMY E. LERMAN, THE MODERN PRISON PARADOX: POLITICS, PUNISHMENT, AND SOCIAL COMMUNITY 6 (2013) (internal quotation marks omitted).

[207] One study analyzed all 175,000 recorded stops in New York from January 1998 to March 1999 and found that Black and Hispanic individuals represented 51% and 33% of the stops, while being only 26% and 24% of the general population, respectively. Andrew Gelman, Jeffrey Fagan & Alex Kiss, *An Analysis of The New York City Police Department's "Stop-And-Frisk" Policy in the Context of Claims of Racial Bias*, 102 J. AM. STAT. ASS'N 813, 815–16. When broken down by the type of crime, Black and Hispanic individuals were stopped about twice as often as white individuals for violent crimes and weapons offenses, while white and Hispanic individuals were stopped more often than Black individuals for property and drug crimes. *Id.* at 819–21.

[208] John Dombrink, *Drug Laws*, *in* COURTS, LAW, AND JUSTICE: KEY ISSUES IN CRIME AND PUNISHMENT 45, 49 (William J. Chambliss ed., 2011).

[209] Mary Murphy, Note, *Race and Civil Asset Forfeiture: A Disparate Impact Hypothesis*, 16 TEX. J. ON C.L. & C.R. 77, 91 (2010) ("[W]hile Blacks comprised 70% of drivers searched, only 28.4% of Black drivers . . . and 28.8% of white drivers searched were discovered with narcotics.").

[210] *Id.* ("Blacks and Latinos comprised 78% of drivers searched, the hit-rate for whites was 25%, 13% for Blacks, and 5% for Latinos.").

[211] Comprehensive Forfeiture Act of 1984, Pub. L. No. 98-473, §§ 301–23, 98 Stat. 2040, 2040–57 (1984).

[212] *Id.* at § 318 ("[T]he Commissioner is authorized to retain forfeited property, or to transfer such property on such terms and conditions as he may determine to . . . any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.").

[213] *See generally* 21 U.S.C. § 881(e)(1)(A), (3) ("Forfeitures"); 18 U.S.C. § 981(e)(2) ("Civil forfeiture"); 19 U.S.C. § 1616a ("Disposition of forfeited property"); 31 U.S.C. § 9705(b)(4) ("Department of the Treasury Forfeiture Fund").

participation of the state and local law enforcement in the effort resulting in the federal forfeiture.[214] Through the programs authorized under federal equitable sharing, state and local law enforcement can retain up to 80% of the net proceeds of the seized assets.[215] As of 2023, neither program allows "tangible or real property to be directly shared with or transferred to a state or local law enforcement agency."[216]

Although program guidelines provide that "[s]hared funds shall not be used to replace or supplant the agency's appropriated resources" and "[a]nticipated equitably shared funds should not be budgeted,"[217] federal equitable sharing has been heavily criticized for these exact reasons.[218] While collaborating with the federal government permits state and local law enforcement to harness greater litigation power, it also allows them to "circumvent state laws that provide better protection to property owners or direct forfeiture proceeds to a neutral account."[219]

Public officials have justified the use of civil forfeiture as criminal justice policy by citing three goals: (1) removing "the financial incentive to engage in drug activity;" (2) "restor[ing] economic integrity to the marketplace;" and (3) "compensate[ing] society for economic damages by rededicating forfeited property to socially beneficial uses."[220] However, the economic incentive associated with CAF is often too good to pass up—every year, federal equitable sharing provides hundreds of millions of dollars to states.[221] Between 2000 and 2019, "payments totaled more than $8.8 billion."[222]

When police departments have limited funding, and there is high

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[214] While the primary factor is "the number of work hours expended by each [participating] agency," if such number does not reflect the agency's contribution, the decision maker may also consider "qualitative factors" regarding each agency's contribution. U.S. DEP'T OF JUST. & U.S. DEP'T OF TREASURY, GUIDE TO EQUITABLE SHARING FOR STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT AGENCIES 11 (2024), https://www.justice.gov/usdoj-media/criminal-mlars/media/1044326/dl?inline.

[215] *Id.* at 12 (noting that the federal share will generally exceed the minimum 20%)

[216] *Id.* at 3 n.2.

[217] *Id.* at 16.

[218] One 2019 study found a causal connection between a jurisdiction's economic environment and local law enforcement's equitable sharing activity, suggesting that "during periods of fiscal stress, police may [turn] to forfeiture to raise revenue." BRIAN D. KELLY, FIGHTING CRIME OR RAISING REVENUE? TESTING OPPOSING VIEWS OF FORFEITURE, INST. JUST. 5 (2019), https://ij.org/wp-content/uploads/2019/06/Fighting-Crime-or-Raising-Revenue-7.20.2020-revision.pdf.

[219] LISA KNEPPER, JENNIFER MCDONALD, KATHY SANCHEZ & ELYSE SMITH POHL, POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE 6 (3d. ed. 2020). *See also* Jefferson E. Holcomb, Tomislav V. Kovandzic & Marian R. Williams, *Civil Asset Forfeiture, Equitable Sharing, and Policing for Profit in the United States*, 39 J. CRIM. JUST. 273, 283 (2011) (finding that "law enforcement agencies in jurisdictions with more restrictive or less rewarding state forfeiture laws receive greater forfeiture proceeds through federal equitable sharing.").

[220] THE WHITE HOUSE, PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS: ECONOMIC REMEDIES, at A-13 (1993), https://www.ojp.gov/pdffiles1/Photocopy/146679NCJRS.pdf.

[221] *See* KNEPPER, MCDONALD, SANCHEZ & POHL, *supra* note 219, at 47 (finding that equitable sharing payments to state and local law enforcement agencies peaked in 2013 at $779 million).

[222] *Id.*

demand for other social services like schools, shelters, and health care providers, areas with high income inequality are likely to be "associated with expanded local reliance on discretionary sources of income such as asset forfeiture."[223] In economically depressed counties where police departments retain seizure revenue, one 2019 study found that drug arrests in Black and Hispanic populations increase while white drug arrests remain unchanged.[224]

B. *Numbers Don't Lie*

After the War on Drugs, racial identity remains a risk factor not only for criminal justice involvement, but also for civil asset forfeiture—which due to federal equitable sharing, is incentivized. In Connecticut, a state which ranks third in income inequality,[225] these conditions are particularly ripe for a deepening of the racial wealth gap.

Although Black and Hispanic people respectively make up only 10 percent and 16.9 percent of Connecticut's population, they respectively represent 42.6 percent and 27.9 percent of the incarcerated population.[226] By contrast, White people make up 65 percent of the state's population, but only 28.5 percent of the incarcerated population.[227] Further, Black and Hispanic poverty rates are 17.3 percent and 21.4 percent, respectively, while the White poverty rate is just 6.1 percent.[228] Lastly, the median income of White residents is nearly double that of either Black or Hispanic residents.[229] While Connecticut does not provide a racial breakdown of the owners of forfeited property in its CAF reporting, the racial breakdown of incarcerations and median income implies a similar disproportionate impact on race-class subjugated communities.

From 2000 to 2019, Connecticut had generated at least $86 million in total forfeiture revenue, $51 million of which was attributable to federal equitable sharing.[230] While these values do not distinguish between civil and

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[223] Ronald Helms & S.E. Costanza, *Race, Politics, and Drug Law Enforcement: An Analysis of Civil Asset Forfeiture Patterns Across U.S. Counties*, 19 POLICING & SOC'Y: INT'L J. RSCH. & POL'Y 1, 14 (2009).

[224] Michael D. Makowsky, Thomas Stratmann & Alex Tabarrok, *To Serve and Collect: The Fiscal and Racial Determinants of Law Enforcement*, 48 J. LEGAL STUD. 189, 207 (2019).

[225] ESTELLE SOMMEILLER & MARK PRICE, THE NEW GILDED AGE: INCOME INEQUALITY IN THE U.S. BY STATE, METROPOLITAN AREA, AND COUNTY, ECON. POL'Y INST. 19 (2018), https://files.epi.org/pdf/147963.pdf.

[226] CLAUDIO GUALTIERI & AYESHA CLARKE, COMM'N ON RACIAL EQUITY PUB. HEALTH, UNDERSTANDING RACIAL INEQUITIES THROUGH DATA 58 figs.5.1 5.2 (2023) https://wp.cga.ct.gov/creph/wp-content/uploads/2023/06/2023-Data-Report-Binder-Updated-June-2023.pdf.

[227] *Id.*

[228] *Id.* at 10–11 tbl.1.2 & fig.1.2.

[229] The median incomes of Black and Hispanic households come in at just $54,325 and $50,912, respectively, while the median income of White households is $95,246. *Id.* at 12.

[230] The total amount attributable to federal equitable sharing breaks down to about $46 million from the Department of Justice and about $5 million from the Treasury. KNEPPER, MCDONALD, SANCHEZ & POHL, *supra* note 219, at 72.

criminal forfeiture, from 2000 to 2015, 71% of forfeited property was processed as CAF.[231] From 2000 to 2018, more than nine out of every ten forfeitures were of currency—half of which were worth less than $665 from 2015 to 2018.[232] For reference, $665 is about 15% of the monthly median income for Black and Hispanic residents.[233] Given the poverty rates discussed above, a loss of $665 is significant for Black and Hispanic households and is likely to affect their ability to afford basic human necessities, like rent.[234] The proportional value of this figure is significant, although low-income households may ultimately determine that recovering their property is not worth spending additional money on legal fees for an *in rem* proceeding.

The Institute of Justice grades and reviews states on their practice and administration of CAF. Though the last report was published in 2020, it still has value as a guide for policymakers looking to further implement CAF reform. For the most part, Connecticut falls in the middle of the pack on most metrics assessed by the Institute of Justice, earning a "C" on average.[235] For example, Connecticut received a "C" grade for its financial incentive to law enforcement,[236] and ranked 28th in participation in federal equitable sharing programs.[237] Connecticut also scores low on transparency and accountability in forfeiture programs.[238] As one of only thirteen states to place the burden of proof on the government for third-party innocent owner claims, Connecticut does score high in that category.[239] While Connecticut is doing better than many other states, it certainly has room for improvement.

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[231] *Id.* at 73.

[232] *Id.*

[233] This estimate presumes an equal distribution of the annual median income of Black and Hispanic households over the course of twelve months. *See* GUALTIERI & CLARKE, *supra* note 226, at 12 (finding that Black and Hispanic median household incomes come in at $54,325 and $50,912, respectively). However, differences in education and workforce experience mean that such households may be less likely to hold salaried positions that provide a consistent monthly income. Considering the rise of the gig economy and seasonal ebbs and flows in certain industries, it is likely that household monthly income may actually vary month to month.

[234] The average rent in Connecticut for a one-bedroom is $1,358, while the national average is $973. Renata Daou, *Cost of Rent in Connecticut is Far Higher Than National Average,* CT MIRROR (Sept. 27, 2024, 2:15 PM), https://ctmirror.org/2024/09/27/ct-us-average-rent-cost/.

[235] KNEPPER, MCDONALD, SANCHEZ & POHL, *supra* note 219, at 72.

[236] *Id.* at 169 tbl.A.3.

[237] *See id.* at 48 tbl.2 (noting that the higher a state ranked, the more it participated in equitable sharing relative to other states).

[238] Specifically, Connecticut earned a C grade for tracking and an F grade for accounting. *Id.* at 12 ("Tracking key details about seized property, as well as related forfeiture and criminal cases, allows officials to responsibly manage property and properly evaluate forfeiture programs . … [s]pecifying the purpose of forfeiture fund expenditures promotes legislative oversight and responsible management of public funds.").

[239] *Id.* at 168 tbl.A.2.

VI. FROM CIVIL TO CRIMINAL: LESSONS FROM OTHER STATES

Currently, there are four states that do not have any CAF laws and only enforce forfeiture through criminal law. However, even in these states where there have been strides toward equitable policies, no state is perfect. In this section, I review the forfeiture laws of North Carolina, New Mexico, Nevada, and Maine. Following this review, I argue that Connecticut should consider adopting some of their policies, while being wary of their pitfalls.

Specifically, federal equitable sharing has proven to be a loophole that has been exploited by enforcement agencies in other states, and Connecticut would do well by limiting state and local agencies' use of the program. Policymakers should also consider more detailed tracking and reporting requirements on seized property, related civil and criminal proceedings, and forfeiture fund spending.

A. *North Carolina*

Unlike most other states, North Carolina does not have a robust forfeiture regime. Although their state constitution does authorize criminal forfeiture, it also provides that all proceeds from such forfeitures are to be used exclusively for maintaining free public schools.[240] North Carolina's criminal forfeiture statutes apply principally to property seized in connection with drug-related offenses.[241] Such actions can only be brought after *conviction* of the offense.[242] However, this does not mean that there *are no* civil forfeitures in North Carolina.

The state legislature expressly authorizes civil forfeitures brought under the state's Racketeer Influenced and Corrupt Organizations Act (RICO), which requires innocent owners to carry the burden of proof.[243] Under RICO, participation in federal equitable sharing programs is also expressly authorized.[244] In fact, "[b]etween 2000 and 2019, North Carolina law enforcement agencies generated more than $293 million in forfeiture

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[240] N.C. CONST. art. IX, § 7(a).

[241] N.C. GEN. STAT. § 90-112 ("Forfeitures."). "[The North Carolina forfeiture statute] is a criminal, or *in personam*, forfeiture statute, as opposed to a civil, or *in rem*, forfeiture statute." State v. Johnson, 478 S.E.2d 16, 25 (N.C. Ct. App. 1996). As a criminal forfeiture statute, the burden of proof is on the state to prove guilt beyond a reasonable doubt. *Id.*

[242] It is worth noting, however, that the statutory period within which such actions may be brought by the state is *three years* post-conviction. N.C. GEN. STAT. § 14-2.3 ("Forfeiture of gain acquired through criminal activity.").

[243] N.C. GEN. STAT. § 75D-5 ("A RICO forfeiture proceeding shall be an in rem proceeding against the property."); *see In re* 1907 N. Main St., 384 S.E.2d 585, 587 (N.C. Ct. App. 1989) ("Nothing in G.S. chapter 75D requires the State to make any person a party defendant or to allege or prove that any person claiming an interest in the property is "innocent" to effect forfeiture. . . . [I]ntervenors claiming to be innocent parties have the burden of proof on that issue.").

[244] N.C. GEN. STAT. § 75D-11 ("The Attorney General is authorized to enter into reciprocal agreements with . . . any other state having a civil forfeiture law substantially similar to this Chapter so as to further the purpose of this Chapter.").

revenue from federal equitable sharing."[245] The lack of a civil forfeiture regime means that the state also lacks any reporting requirement. As such, no figures are available regarding forfeiture revenue from state proceedings.

B. *New Mexico (2015)*

Through the Forfeiture Act of 2015, New Mexico eliminated CAF[246] and significantly hindered state and local agency participation in federal equitable sharing.[247] Seized property is only subject to criminal forfeiture if it was acquired through the underlying crime, was instrumental in its commission, or was directly traceable to it.[248] In addition to proving by clear and convincing evidence that the property is subject to forfeiture, the state must prove that the prosecution of the owner resulted in a conviction and that the value of the property does not unreasonably exceed the pecuniary gain or loss of the underlying crime or the value of the owner's interest in the property.[249]

The 2015 New Mexico Act also created a new reporting requirement as to the quantity and value of seized and forfeited property,[250] and an "innocent owner" defense which placed the burden on New Mexico to prove by clear and convincing evidence that the owner had knowledge of the underlying crime.[251] In 2019, New Mexico made further changes to the Forfeiture Act, heightening the state's reporting obligations by requiring the state to provide data on costs for (1) storage, maintenance, and transportation of seized property, and (2) proceeds from equitable sharing and the final disposition of the associated federal case.[252] In the case where there is no innocent owner and the criminal prosecution required for forfeiture cannot proceed, seized property is deemed abandoned and is disposed of by public auction, along with forfeited personal property, in accordance with the Forfeiture Act.[253]

C. *Nebraska (2016)*

Just one year after New Mexico, Nebraska also enacted legislation

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[245] KNEPPER, MCDONALD, SANCHEZ & POHL, *supra* note 219, at 126.

[246] 2015 N.M. Laws 1684 § 2(A)(1)–(6) (one of "[t]he purposes of the Forfeiture Act [is] to ensure that only criminal forfeiture is allowed in this state.").

[247] *Id.* at 1705 § 13(B) ("The law enforcement agency shall not transfer property to the federal government if the transfer would circumvent the protections of the Forfeiture Act that would otherwise be available to a putative interest holder in the property.").

[248] *Id.* at 1688–89 § 4(B).

[249] *Id.* at 1695–96 § 7(G).

[250] *Id.* at 1702–03 § 11 ("Reporting").

[251] 2015 N.M. Laws 1700 § 9(D).

[252] 2019 N.M. Laws 1070 § 10(A)(5)–(6).

[253] *Id.* at 1066 § 7(F)–(G). Proceeds from such an auction, along with any forfeited currency, are used to reimburse any storage costs and pay for disposal expenses before being deposited in the general fund. *Id.* at 1065 § 7(B).

eliminating CAF.[254] In doing so, the state now requires the state or municipal attorney to prove that property is subject to forfeiture by a clear and convincing standard.[255] However, the state's constitution incorporates a financial incentive: 50% of all money forfeited pursuant to enforcement of drug laws is paid over to the counties for the very same purpose of enforcing drug laws.[256] So despite abolishing CAF, "[b]etween 2016 and 2018, Nebraska law enforcement agencies forfeited more than $7 million under state law."[257]

The state also generated $76 million from federal equitable sharing programs between 2000 and 2019.[258] Although the Nebraska Act prohibits participation in federal equitable sharing, the legislature left available an exception—seized property worth over twenty-five thousand dollars can still be referred to federal law enforcement.[259] Along with another exception permitting warrantless seizure of property suspected to be connected with drug trafficking, this statutory scheme has since been taken advantage of to circumvent the conviction requirement under state law and so enhance local law enforcement's revenue.[260]

D. *Maine (2021)*

In 2021, Maine became the latest state to abandon CAF when it passed the Act to Strengthen Protections against Civil Asset Forfeiture.[261] The bill "completely ends civil forfeiture, and moves all forfeiture to the criminal forfeiture category."[262] The state amended the remaining criminal forfeiture laws once more in 2023.[263] Seemingly looking to limit the use of equitable

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[254] L.B. 1106, 104th Leg., 2d Sess. (Neb. 2016).

[255] The previous standard was a preponderance of the evidence. *Id.* at § 1(12)(b).

[256] NEB. CONST. art. VII, § 5(2).

[257] KNEPPER, MCDONALD, SANCHEZ & POHL, *supra* note 219, at 114.

[258] *Id.*

[259] L.B. 1106, 104th Leg., 2d Sess., § 13(1) (Neb. 2016) ("No law enforcement agency or prosecuting authority of this state or its political subdivisions shall transfer or refer any money or property to a federal law enforcement authority or other federal agency by any means unless . . . [t]he money or property seized exceeds twenty-five thousand dollars in currency or value.").

[260] *See id.* § 6 (permitting warrantless seizures upon probable cause of drug trafficking), § 12(1) (requiring prosecutor to state intent to seek forfeiture *upon conviction*); *see also* Natalia Alamdari, *Using Loophole, Seward County Seizes Millions from Motorists Without Convicting Them of Crimes,* NEB. PUB. MEDIA (June 15, 2023, 4:00 PM), https://nebraskapublicmedia.org/en/news/news-articles/using-loophole-seward-county-seizes-millions-from-motorists-without-convicting-them-of-crimes/ (discussing use of loopholes in Seward County, where law enforcement seized $2.3 million through state and federal CAF in 2021 alone).

[261] 2021 Me. Laws 998.

[262] Written Testimony of Billy Bob Faulkinham, Rep. 12th District, in Support of LD 1521, Before the Committee on Judiciary, 130th Leg., 1st Spec. Sess. (May 7, 2021).

[263] 2023 Me. Laws 295 ("An Act Regarding the Transfer of Seized Currency to the Federal Government for Criminal Asset Forfeiture"); *see also* 2023 Me. Laws 399 ("An Act Regarding Payments to Recipients of Restitution").

sharing further,[264] the Maine legislature enacted Title 15, which now prohibits state agencies from transferring seized property to any federal agency unless in conjunction with a federal criminal case.[265]

In an effort to increase transparency of the state's use of forfeiture,[266] the 2021 Act additionally added that the Department of Public Safety shall maintain and make publicly available records of forfeiture transfers.[267]

The principal change made by the 2021 Act provides that property is only subject to forfeiture if the *owner* is *convicted* of the crime in which the property was used.[268] This applies to owners responsible for the crime, as well as to those who knowingly allowed someone else to use their property to commit a crime.[269] In the case of firearms, the burden of proof shifts from the property owner to the state, requiring a prosecutor to prove that the owner was both the person committing the criminal offense and was convicted of such act.[270] However, the Act also introduced exceptions for the conviction requirement, permitting forfeiture of property as part of a plea agreement.[271] Further, the Act permits the court to waive this requirement and grant title to the state if it files a motion within 90 days of seizure showing that, before conviction, the defendant died, was deported, abandoned the property, or fled the jurisdiction.[272]

CONCLUSION

So, what happens if an individual whose property was seized passes before the related criminal proceeding is disposed of? Does the government have the right to hold this property indefinitely? Are successors to that individual's estate able to recover the seized assets?

Neither Connecticut courts nor the legislature has explicitly addressed the issue. Although in civil litigation, a cause of action survives the death of a party "in favor of or against the executor or administrator of the deceased person,"[273] the *in rem* nature of CAF proceedings means that the state is not required to continue the action against the decedent's estate. In cases where the true owner is the defendant in an underlying criminal proceeding, the

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[264] In 2020, the Institute for Justice ranked Maine as the sixth state with the lowest reliance on equitable sharing. KNEPPER, MCDONALD, SANCHEZ & POHL, *supra* note 219, at 48 tbl.2.

[265] 2023 Me. Laws 295 § 1. This section was first added in 2021. Me. Laws 999 § 5.

[266] Maine received failing grades for accessibility of forfeiture records in 2020. KNEPPER, MCDONALD, SANCHEZ & POHL, *supra* note 219, at 99.

[267] 2021 Me. Laws 999 § 12.

[268] *Id.* at 998 §§ 1–2. While Section 2 refers only to firearms and weapons, Section 1 applies broadly to scheduled drugs, related production materials, and other property used to store and protect such items. 15 M.R.S. §§ 5821(1), (3-A) (2025).

[269] Faulkingham, *supra* note 262.

[270] 2021 Me. Laws 998 §§ 2–3.

[271] *Id.* at 999 §13.

[272] *Id.*

[273] *See* CONN. GEN. STAT. § 52-599(a) (2025) ("Survival of cause of action. Continuation by or against executor or administrator").

lack of a *nolo contendere* plea, guilty plea, guilty verdict, or post-diversionary program dismissal would otherwise require the Court to deny the state's petition. Instead, the resulting de facto forfeiture violates statutory default rules on estate succession.

Though a more equitable justice system would be achieved through the elimination of civil forfeiture altogether, such a policy shift is not a proximate reality.[274] Abatement, however, may be able to preserve successors' rights. While in Connecticut, civil actions do not abate by reason of death,[275] the Fourth Circuit has found abatement to be proper in criminal forfeiture proceedings upon the death of the owner-defendant.[276] I propose that if the State seeks to continue with a forfeiture action, it must file a new petition against the decedent's estate or lawful successors within one year of learning of the death, akin to the requirements of civil litigation.[277] In this circumstance, the State would retain the burden of proof, and the heir would be able to avail themself of an "innocent successor" defense, akin to the innocent owner defense. An owner's successors in interest would be able to rely on the same due process and notice requirements available to them in probate matters.[278] Likewise, the State would be able to make use of probate abandoned property statute if no successor can be identified.[279]

Legislatively, Connecticut should avoid a law like Maine's, which eliminates *civil* forfeiture, but also permits a court to "waive the conviction requirement . . . and grant title to the state if it files a motion within 90 days of seizure [showing] that, before conviction, the defendant *died*."[280] Connecticut should also remove the profit incentive by outlawing federal equitable sharing, like Nebraska, and by allocating seized funds to social safety net programs. In addition to funding public schools, like North Carolina, funds should be directed toward food assistance, housing support, and healthcare programs, which would help address the systemic issues faced by race-class subjugated communities. Additional reporting obligations, like those in New Mexico, would further require accountability for biased policing practices.

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[274] Although it landed dead in the water, such a policy was proposed to the Connecticut Senate just this year. *See* S.2025-1171, Jan. Sess. (Conn. 2025) ("An Act Eliminating Civil Asset Forfeiture").

[275] CONN. GEN. STAT. § 52-599(b) (2025).

[276] United States v. Ajrawat, 738 F. App'x. 136, 139–40 (4th Cir. 2018) (holding that defendant's conviction was extinguished because of death during appeal, thus the forfeiture and restitution orders must be abated); *see also* United States v. Lay, 456 F. Supp. 2d 869, 872–75 (S.D. Tex. 2006) (noting that abatement rule—where conviction abates if a defendant dies post-sentencing but before an appeal is final—applies equally to cases where defendant dies pre-sentencing and pre-judgment; vacating conviction and restitution order).

[277] CONN. GEN. STAT. § 52-599 (b). *But see Id.* (c) ("The provisions of this section shall not apply . . . to any civil action upon a penal statute."). Because a CAF proceeding does not concern the guilt or innocence of the owner, I do not believe this proposal to be in contradiction with this subsection.

[278] *Supra* Part I(B)(2).

[279] *Id.*

[280] 2021 Me. Laws 999 § 13.

To the extent that civil asset forfeiture will remain ingrained in our justice system,[281] efforts must be made to safeguard successors' rights and remedy the systemic inequities that it perpetuates.

[281]The Governor signed "An Act Concerning The Seizure And Forfeiture Of Virtual Currency And Virtual Currency Wallets" just this year on June 23, 2025. *See* H.B. 6990, 2025 Reg. Sess. (effective June 1, 2026) (including virtual currency within the scope of all four of the state's CAF statutes). In 2024, Connecticut brought in nearly $3 million in federal equitable sharing. *See* DEP'T OF TREAS., TREASURY FORFEITURE FUND ACCOUNTABILITY REPORT 39 (2024) (receiving $107,000 from the Treasury Fund); DEP'T OF J., EQUITABLE SHARING PAYMENTS OF CASH AND SALE PROCEEDS BY RECIPIENT AGENCY IN CONNECTICUT 2 (2024) (receiving $2,894,226 from the Justice Fund).