<u>SLCO DA'S OFFICE ASSET FORFEITURE STATISTICS, 2015-2016</u>

To better address what we believe are misunderstandings of the current use of civil asset forfeiture in Utah, the Salt Lake County District Attorney's Office analyzed the civil asset forfeiture cases we filed in 2015 (full year) and 2016 (cases for January-October only).

Hyperbole Aside, Asset Forfeiture is Rarely Used in Salt Lake County

In 2015, we filed 288 asset forfeiture cases, which was roughly 2.13% of the criminal cases filed that same year (13,490). Looking only at our 2015 cases involving drug offenses (5,703 cases), the percentage is still only 5.05%. Similarly, in January-October 2016, we filed 224 asset forfeiture cases, with approximately 12,418 criminal cases filed during that same time period.[1] That means we filed asset forfeiture cases in only about 1.80% of our total criminal cases. Looking again at only our cases involving drug offenses (6,026 cases), the percentage is still only 4.46 percent.

So, in the roughly two years we analyzed, Salt Lake County filed only 512 asset forfeiture cases[2] despite a total criminal caseload of approximately 25,908 criminal cases during that same period. <u>That means we filed asset forfeiture cases in only about 1.98% of our criminal cases in the past two years</u>. And even if that analysis is narrowed to include only cases involving drug offenses (10,724 cases), the percentage is still only 4.77%.

"Innocent Owner" Claims Are Rarely Asserted

Of the 512 asset forfeiture case discussed above, <u>"innocent owner" claims were asserted in only 29 of those cases, or 5.66%</u>. In eight of those cases, some or all of the property was returned. In another five, the County prevailed on summary judgment, one resulted in a default judgment, and one was dismissed after the federal government asserted jurisdiction. Fourteen remain unresolved.

Importantly, we believe the number of "innocent owner" claims is likely to increase if Senator Thatcher's pre-filing "claim" procedures are adopted (*see* SB87 lines 342-end). That is perhaps especially so if those pursuing a pre-claim resolution are entitled to full reimbursement of reasonable attorney fees if their properly supported claim is wrongfully denied, and they are later found to qualify as "innocent owners" pursuant to statute. This means Senator Thatcher's language is likely to encourage, before a case is even filed, <u>both</u> the timely filing of claims <u>and</u> the diligent, reasonable assessment of those claims by agencies who are considering forfeiture—all without needlessly burdening the court system with cases that might be easily resolved.

Early "File-or-Return" Procedures Will Benefit the Vast Majority of Property Owners

Of the total 512 asset forfeiture cases we analyzed, 83.01% involved cash-only seizures valued at less than $5,000. Another 4.69% involved cash-only assets valued at between $5,000-$10,000. (Anecdotally, the low value cash-only cases very frequently involve arrests made in open air drug markets like the Rio Grande area, where there are "bankers" holding cash for dealers; in 2015-2016, those cases (183 total) comprised a full 35.74% of our asset forfeiture caseload.)

Importantly, that means that <u>87.7% of our cases</u> would have benefitted from the increased protections in Senator Thatcher's bill, SB87, which would apply 60-day "file-or-return procedures" to all cash-only cases involving less than $10,000 (*see* SB87 lines 255-266).

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[1] We decreased the total number of criminal cases, i.e., 14,902 cases, to an estimated 12,418 cases to approximate the shortened time frame for which asset forfeiture cases were available to query. (January-October = 10 months of 12; 10/12 = .8333; 14,902 x .8333 = 12,417.8366.)

[2] There were also 11 cases during that time where we declined law enforcement's request to bring a case at all—because we were convinced, pre-filing, that for whatever reason the case should not be pursued.

Adequate Notice is Key to Both Parties

Unfortunately, we were able to effect personal service in only 344 cases, or 67.19% of the total asset forfeiture cases filed in 2015-2016. The remaining cases (168, or 32.81%) required service by publication. That could be due to a variety of factors, and may be an unfortunate but unavoidable side effect of the number of cases involving ICE deportations (approximately 65-70 cases, or 12.70%-13.67%) and potentially transient arrestees in and around the Rio Grande area (approximately 91 cases, or 17.77%). But service by publication is also, for better or worse, our only option when we cannot locate the individual at her last known address (often the address given to the arresting officer).

Again, however, we think those numbers are likely to improve with the early notification procedures included in SB87, which mandates that seizing agencies promptly advise the individual from whom property is taken of key upcoming deadlines, forfeiture procedures, and how to assert timely claims (*see* SB87 lines 141-145). From the earliest possible time, property owners and other claimants will thus have access to information stressing the importance of communicating with the seizing agency.

Default Judgments are Frequent, but Are Likely to Decrease under SB87

We also looked at our cases where default judgments were granted (408 cases, or 79.69%, out of the total 512 asset forfeiture cases filed). Although it is not possible to know exactly why people choose not to appear and claim property that the State contends is the proceeds of crime, we did determine that approximately 22.30%, involved arrests made in the Rio Grande area, where cash is often seized from "bankers" who readily disclaim any ownership in the money because, in the arrestee's view, it "belongs" to the dealer and is only "held" by the arrestee. Another approximately 15.93%-17.16% of the default cases involved arrestees who were deported by ICE.

Again, we think the number of default judgments is likely to do down in light of the early notification procedures included in SB87. We also think the attorney fee language in SB87 (lines 342-end) will likely encourage more people to assert timely claims to seized assets, and will increase the number of cases where those claimants are represented by counsel.

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