

Calif. may ban property seizures from non-criminals

By Glen Martin, CALmatters

She is known by the pseudonym of Elizabeth James – a retiree from the phone company who was contemplating a cross-country trip with her machinist husband. They had worked for decades raising two children and caring for her disabled sister, who lived in a home the couple had bought and remodeled in East Palo Alto. Then police raided the sister's home and arrested the Jameses' son, who had been living in a back room, for drug-dealing.

Although Elizabeth James was never charged with a crime – she insisted she didn't know what her son was doing – city police worked with federal authorities who evicted her sister and seized the house under a process known as civil asset forfeiture.

More than 220 California law enforcement agencies have partnered with federal prosecutors to instigate civil asset forfeiture, allowing them to seize and liquidate the assets of people who weren't convicted or even charged with crimes.

The goal: to deny drug dealers working capital and divert the value of their assets to crime-fighting efforts. But critics have condemned it as “policing for profit,” arguing that it strips citizens of their goods without due process.

After overcoming objections from some in law enforcement, a bill to curtail the practice cleared the Legislature by a wide margin and is awaiting Gov. Jerry Brown's signature.

“SB443 isn't the platinum reform standard for civil asset forfeiture, but it's still a very good bill,” said Lee McGrath, legislative counsel for the Institute for Justice.

“More to the point, this is a California bill. When California does something, everybody in the nation pays attention.”

State law already prevents civil asset forfeiture in most state cases – an exception being large bundles of cash – unless the owner is convicted. But it allows state and local police to collaborate on drug cases with the federal government, which not only doesn't require convictions for civil asset forfeiture, but rewards cooperating agencies with up to 80 percent of the assets' worth.

The result has been a big surge in the federal variety. A state Senate bill analysis indicates that the amount California agencies collected under the federal program in 2014 was \$77 million.

The bill's biggest impact: It would ban local and state police from reaping the gains of federal civil asset forfeiture unless the owner of the assets is convicted of a crime. It also would bolster existing protections under state law by raising the threshold for the forfeiture of cash absent a conviction from \$25,000 to \$40,000, and requiring a conviction before the government can claim property such as boats and cars.

Even if SB443 becomes law, it will be too late for Elizabeth James. Her lawyer recommended a deal: Their son pleaded guilty and the government would drop all claims to the house – although it would not reimburse the couple for legal fees or home damage from the raid.

Her case illustrates “why I think civil asset forfeiture is tantamount to theft,” said her attorney, James Cooper. He maintained James' son was a “low-level dealer” and that “the house was in no way germane to the case,” he said. The U.S. Attorney's Office and East Palo Alto police did not respond to questions about the 2009 case.

But Mica Doctoroff of the American Civil Liberties Union

called it “a prime example of people not guilty of doing anything wrong getting swept up in asset forfeiture.”

Still, support for California’s SB443, sponsored by state Sen. Holly Mitchell, D-Los Angeles, and Assemblyman David Hadley, R-Manhattan Beach, wasn’t unanimous.

“My argument is that it’s just as important to take down the small-time dealers as the kingpins,” said Assemblyman Jim Cooper. “I served 30 years in the (Sacramento County) sheriff’s department, and worked 10 years in narcotics and gangs. I spent years undercover, buying drugs from ‘small-time’ dealers. I see what they do.”

The way to hobble drug traffickers, he says, “is to hit them in the pocketbook, and asset forfeiture is the most effective way to do that.”

But critics – from the conservative Heritage Foundation to the liberal ACLU – say more Jameses are being ensnared than El Chapos or Pablo Escobars. Examples:

- The immigrant landlord in Anaheim whose modest commercial building was seized because his tenants included not just a dentist and an insurance company, but also a marijuana dispensary.
- The taco truck operator who had \$10,000 in cash confiscated after he was stopped by the Los Angeles Sheriff’s Department.
- The Los Angeles music promoter who had to battle for the return of \$13,000 cash seized in a Shasta County traffic stop – the door receipts from his Mexican music concerts.

In each instance, the property owner was not arrested. Sometimes they got their property back, but only after a costly legal battle.

Ventura Police Chief Ken Corney, president of the California

Police Chiefs Association, said the bill strikes a balance.

“There are many times when it may not be possible to apprehend or convict a trafficker. Many would rather abandon their money or property than be held accountable for their acts. So denying them resources can at least inhibit some of their future activities, and helps us keep the pressure on them.”

Besides, he said, people can always go to court to get their property back.

“Most of the people who are caught up in this are poor and are often people of color, people who are struggling to get by under the best of circumstances,” countered Shillinger. “They may not speak English. They’re intimidated by the courts, they often can’t take time off from work to go through lengthy judicial proceedings, and they usually don’t have the wherewithal to hire an attorney. So they tend to just suffer their losses and walk away.

“And the police count on that.”