

BLOG POST

Knock it off or I'm stopping this car!

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You know how kids bicker in the back seat of a car? (Not my kids, of course. No, never.) And you're driving to the beach, and they won't quit bickering about who's touching whom, and you threaten to turn the car around and head home if they don't knock it off? And that you really mean it this time? But you don't *really* mean it because you are just as anxious to get to the beach, only you don't need to antagonize everyone else in the car in order to make the time go by more quickly?

Yeah, that's the Department of Justice when it comes to asset forfeiture.

Bear with me here. [four-part Washington Post series](#) called "Stop and Seize" that describes the use of bogus highway interdiction stops to inflate the budgets of local police departments. It is worth a read.

There is a difference, of course, between the local, state, and federal forfeiture programs. The Department of Justice does not become involved in seizures made by local and state authorities unless it "adopts" the forfeiture or the seizures are made during the course of a federal investigation. In those instances, the Department is responsible for apportioning a portion of the seized amount – commensurate with the level of participation of the state and local authorities minus an administrative charge – to those local and state authorities. But in the vast majority of highway interdiction stops, the federal government never becomes involved.

Nevertheless, in response to the heightened criticism of the asset forfeiture concept, [the Department issued a "voluntary" code of conduct "to remind local and state police about the need to honor Constitutional values and the civil rights of motorists."](#) I'm not making that up. When confronted with examples of systemic forfeiture abuse, the Department says, *please remember not to violate Constitutional rights.*

In other words, stop that bickering or I'll stop this car!

Asking a local or state police department that is making a living off of bogus highway interdiction seizures to pretty please follow the law is, quite frankly, not going to do a whole lot to change behavior. It reminds me of what [Jerry Seinfeld says about a helmet law](#), which is to protect a brain that is functioning so poorly that it is not even trying to protect the cracking of the head that it's in. We seriously need guidance telling law enforcement not to violate the law?

Look, the only way to truly disincentivize the conduct is to make sure that forfeiture funds do not flow back directly to the police department. A police officer who seizes cash should not have the ability to spend that cash. Period.

In Washington, D.C., [***the City Council overhauled its asset forfeiture program***](#) in just this way. Taking effect in 2018, forfeited funds will go to the city's general fund. Does the incentive problem still exist? Well, yes – but it is much more diffused. The D.C. Council would determine the expenditure of the seized and forfeited funds as opposed to the very agency responsible for seizing them in the first place.

The core problem is that asset forfeiture brings in billions of dollars from seizures occurring at the local, state, and federal levels. With mere “voluntary” guidance, the Department prioritizes the flow of the money over the protection of rights, despite evidence of flagrant and systemic abuses at the local and state levels. So the Department threatens to stop the car, you see. But it doesn't really mean it.

Because I guess it wants to go to the beach, too.