



Asset Forfeiture

I. Introduction

On January 16, 2015, former Attorney General Eric Holder issued an announcement to change civil asset forfeiture policy under the Department of Justice (DOJ). These new policies prohibit state and local law enforcement from seizing assets and turning them over to federal law enforcement agencies in what are known as "state adoptions". These adoptions are prohibited with the exception of "property that directly relates to public safety concerns, including firearms, ammunition, explosives and property associated with child pornography".¹ We are concerned that the prohibition of these state adoptions is a continuation of the federal erosion of drug enforcement policy.

II. Drug Profits

Asset forfeiture allows for the seizure of drug deal and trafficking profits in order to prevent further criminal activity, in addition to removing incentive for the commission of such crimes. Some of the money collected in these seizures is returned to the agencies to fund further investigation. Allowing criminals to keep the profits of their crimes leaves significant motivation for them to continue their practices once released from any sentence they may be serving. We believe that many drug-related profits will go unseized because of this change in policy. Drugs and their profits are the foundation on which many violent and property crimes rest, not to mention drug-induced death. Illegal drugs are often the financial underpinning of much larger criminal endeavors. Despite not always being directly related to firearms, ammunition, or child pornography, these crimes are significant and their profits allow for the continuance of other more violent crime.

III. Intelligence Sharing and Cooperation

The second concerning aspect of this policy change is the thwarting of information sharing and cooperation between local and federal law enforcement agencies. Both local and federal officers

¹ Henderson, Keith A., Statement to the House, Committee on the Judiciary, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations. *Federal Asset Forfeiture: Uses and Reforms*, Hearing, Wednesday, February 11, 2015.
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rely on the other to execute these seizures efficiently and appropriately.² While this new policy includes an exception for task forces, we are still concerned that this change will reduce the incentive for agencies to partner with one another.

IV. Public Perception

Members of the public have often criticized asset forfeiture policy as allowing for unfair seizures and the withholding of improperly obtained goods. We denounce the inappropriate seizure of assets and acknowledge that opportunity for duplication exists since most states also have their own asset forfeiture laws.³

V. Proposals

Four national law enforcement organizations, the Major Cities Chiefs Association (MCCA), Major County Sheriffs' Association (MCSA), International Association of Chiefs of Police (IACP), and the National Sherrifs' Association (NSA), collectively sent a letter to Former Attorney General Holder to outline proposed policy reforms for the asset forfeiture program going forward.⁴

- The first suggestion is that adoption cases conducted by local and state law enforcement should only occur for cases involving serious crime that poses a threat to public safety such as drug and human trafficking, firearms, terrorism, and gang activity.⁵
- Secondly, the letter asks that the DOJ develop a comprehensive and detailed process for the management of forfeiture cases. The creation of a manual on seizures would lead to consistency between agencies and would help uphold the requirements of CAFRA. Adequate training of all officers authorized to make these seizures would also provide for more standardized adoptions.⁶
- The third proposal is that seizures of assets must demonstrate a criminal nexus and a report outlining the existence of this network and tying it to relevant statutes will allow for greater transparency in seizure cases and will address unfair seizure claims and concerns.⁷

² Henderson, 3.

³ Henderson, 5.

⁴ Ibid.

⁵ Henderson, 6.

⁶ Ibid.

⁷ Ibid.

- The fourth suggestion raises the threshold for adoptions with no arrest to \$10,000. The DOJ would have the ability to grant exceptions in certain cases pertaining to repeat offender and criminal organizations.⁸
- Finally, increased transparency will build trust among the public and that this should be fostered by annual DOJ reports and the publishing of any seizure procedures that would not jeopardize their investigative power.⁹

We support the proposals of our colleagues and recommend that they continue to pursue prosecutable cases, instead of situations in which the primary objective is the acquisition of assets.

⁸ Henderson, 6.

⁹ Ibid.

Body-Worn Cameras

I. Introduction

Body-worn camera programs are being implemented in police departments across the country in an effort to increase police accountability. While complaints of police misconduct have declined in jurisdictions where cameras are in use, the technology creates several challenges.¹⁰ With the accountability that these devices bring, they also introduce massive amounts of evidentiary data. This data is invaluable in factual disputes, but generates serious privacy concerns. While the cameras are not inexpensive to purchase, the majority of their cost is administrative. The introduction of all new technology requires the development of policy to manage it, in addition to the increased personnel required to process, organize, and review all the data. A picture may be worth a thousand words, but the scope of body-worn cameras is limited, as with any recording device. While more objective than a human account, film from a body-worn camera will never be able to report anything more than what it can capture with its lens. Despite these obstacles, we welcome the integration of such technology into law enforcement and believe it will play an increasingly important role in the prosecution of criminals across the country.

II. Costs

While the cost of purchasing the amount of cameras needed is certainly substantial, police departments are finding that the vast majority of their costs are incurred by the required personnel and storage costs in order to manage all of the data produced by filming. The ratio of support costs to investment costs is 4:1. With the police force monitoring their jurisdictions 24 hours a day, seven days a week, the hours of video accumulate rapidly. Police departments then must establish policy on how long to store video records before destroying them. The maintenance of body-camera programs may begin to erode at a department's budgetary allowances for other law enforcement tools. These extensive costs are only part of the debate regarding when and where officers should turn on their cameras.

¹⁰ Weir, Peter A., Statement to the U.S. Senate, Judiciary Committee, Subcommittee on Crime and Terrorism. *Body-Worn Cameras by Police Officers – A Prosecutor's Perspective*. Hearing, Tuesday, May 19, 2015. 6.

III. Extent of Recording, Privacy, and Release of Information

There are competing factors in each situation an officer might encounter concerning whether or not it is best to record. Victims of crimes like sexual assault and domestic violence may be wary to have the responding officer film the scene, and this hesitance could lead to a decline in emergency calls for sensitive situations.¹¹ Bystanders and witnesses may also be unhappy about appearing in these video recordings. Body-worn cameras create an enormous amount of footage that could be subject to release under state open records laws¹². Release to defendants, the public, and the media has serious implications for the privacy of those on camera. Certain elements of response call films will need to be redacted to maintain security for the victims of sexual crimes, home invasions, etc. This will only add to the already extensive processing time required to manage the deluge of footage.

VI. Physical Limitations

Body-worn cameras can be worn either on the chest, shoulder, or attached to glasses. Cameras on the officer's chest will not turn with his head, therefore limiting the footage of what the officer observed. For example, the officer may need to adjust his movements and actions to make sure they are detected by the camera mounted on his chest.¹³ If placed on the glasses, they are still unable to operate like a pair of human eyes.¹⁴

VII. Conclusion

Cameras will likely become an indispensable part of criminal investigation, but they are not a silver bullet in the reduction of tensions between police and the community. These concerns and issues should become a part of the discussion surrounding cameras' integration into law enforcement practices. While federal assistance is welcomed, individual states and agencies must decide on the policies that work best for their officers and communities.¹⁵

¹¹ Weir, 4

¹² Weir, 5

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Weir, 6

Encryption

I. Introduction

In October 2013, The Supreme Court ruled that law enforcement was generally required to obtain a warrant prior to searching the cell phone of an arrested individual.¹⁶ Last year, both Apple and Google proudly announced that their new operating systems are designed to make encrypted information inaccessible to law enforcement, even with an appropriate warrant. Apple and Google run 96.4% of smartphones in the market, and as of March, 78% of iPhones were operating on iOS8, rendering them essentially “warrant-proof”.¹⁷ This design damages efforts to obtain information crucial to legitimate and essential criminal investigations, yet Apple and Google continue to insist on holding their judgment over that of the law enforcement community. The actions of corporations like Apple and Google are placing the victims of an expansive array of crimes at a disadvantage to their perpetrators. The absence of a “backdoor” to encrypted material inhibits investigations surrounding terrorism, sex trafficking, sexual abuse, child abuse, and pornography.

II. Privacy

Unlike corporate entities that claim to hold the privacy of their customers as a primary concern, law enforcement only looks to retrieve information from citizens in light of a criminal investigation. Computers and smart phones now hold the sort of critical information that trunks and safety deposit boxes held before the advent of such technology.¹⁸ Apple and Google assert that leaving a point of access for law enforcement jeopardizes the privacy of the masses. However, law enforcement is not interested in maintaining a database of consumer information or routine correspondence. They are simply interested in retrieving relevant data with authorization from a judge to assist in criminal prosecution. The vast majority of law-abiding citizens would be unaffected by providing access for officers with a warrant. Apple and Google argue that if they were to leave a “backdoor”, it would be possible for hackers and those with illegal motives to obtain the public’s information. Despite their claims, Obama administration officials and the FBI have urged these corporations to create a way to allow legal searches without increasing consumers’

¹⁶ Riley v. California, 573 U.S. ____ (2014)

¹⁷ Conley, Daniel F., Statement to the House, Committee on Oversight and Government Reform, Subcommittee on Information Technology. *Encryption Technology and Potential U.S. Policy Responses*, Hearing, Wednesday, April 29, 2015. 5.

¹⁸ Conley, 3.

vulnerability to hackers.¹⁹ While Apple reports that they only collect the minimum amount of data from customers in order to create a positive user experience, Google and many other influential entities do not adhere to this philosophy, and profit hugely off of collected consumer data.²⁰ This double-standard is not in the best interest of the public, especially the victims of crimes that could only be successfully prosecuted with data lost to encryption.

III. Terrorism, Sex Trafficking, and Financial Crime

Law enforcement's ability to access cell phone information played a central role in the investigation and prosecution of the Boston Marathon bombings, and is an essential part of terrorism prevention.²¹ While these operating systems constitute a large barrier, militants also make frequent use of messaging apps such as Kik, Whatsapp, Surespot, and Wickr to recruit and go about organizing their behavior without detection.²² The design of encrypted devices and apps has also allowed for the organization and facilitation of human trafficking. Additionally, numerous financial fraud and drug trafficking schemes have been apprehended and dismantled thanks to legitimate searches of mobile devices.²³ With these technological advances, perpetrators of these sorts of large-scale crimes are able to conduct their business with reduced risk of apprehension and investigation.²⁴ It is especially crucial for the investigation of premeditated and multi-person crimes that these phones and apps not be encrypted.

IV. Other Crime

While Apple and Google are reacting to the overreach of the NSA, in reality, their universal denial of access to this information adversely affects local and state law enforcement and the citizens we aim to protect. It may be true, as Apple claims, that the "bad guys" will work to find a way to encrypt their information even if these operating systems were not warrant-proof. However, many crimes could be prosecuted successfully with the cell phone data left accessible by less savvy criminals. For example, cases of "upskirting" on mass transit and videos and pictures documenting

¹⁹ Cowan, Richard. "Exclusive: U.S. Tech Industry Appeals to Obama to Keep Hands off Encryption." *Www.Reuters.com*. June 9, 2015. Accessed June 11, 2015.

²⁰ Lomas, Natasha. "Apple Stresses Privacy at WWDC." *TechCrunch*. June 8, 2015. Accessed June 10, 2015.

²¹ Conley, 7

²² "With Islamic State using instant messaging apps, FBI seeks access to data". *LA Times*. June 8, 2015. Accessed June 11, 2015.

²³ Conley, 4.

²⁴ *Ibid.*

sexual crimes are often found unencrypted on the phones of perpetrators.²⁵ This kind of accessible data has been involved in solving almost every homicide in recent years, according to Daniel F. Conley, the District Attorney from Suffolk County, Massachusetts.²⁶

V. Innocence

It is important to note that access to information does not matter exclusively in the determination of guilt, but also in the ability to conclusively prove innocence. Digital evidence is able to serve a similar role as DNA science in exonerating innocent defendants and convicts. With Apple and Google's new encryption systems, law enforcement may be unable to gain access to an unwilling party's mobile device in order to set another party free.

VI. Requests

We have requested that Congress prohibit the sale of digital devices that cannot be accessed by investigators with a judge-issued warrant. District Attorney Daniel F. Conley also asked the Committee on Oversight and Government Reform to update the Communications for Law Enforcement Assistance Act, or CALEA, to cover smartphones.²⁷

²⁵ Conley, 4.

²⁶ Ibid.

²⁷ Conley, 7.