The legal and legislative approach to civil asset forfeiture on the federal and state levels has a history that is far from consistent. This practice – of law enforcement seizing assets associated with alleged criminal activity prior to a conviction – has been championed by some as a method to transfer funding from criminal perpetrators to law enforcement efforts, while considered by others as an affront to the Constitution’s Due Process Clause. Regardless of these lenses, one cannot fully comprehend this landscape without considering how both federal and state actions have intertwined and progressed over time.

History of Federal Action on Civil Asset Forfeiture
Though the federal government has exhibited a relatively limited focus on civil asset forfeiture compared to other policies, its actions on the issue in tandem with the states has come to characterize the controversial practice.

- **Comprehensive Crime Control Act (CCCA, 1984):** This law marked the beginning of modern civil asset forfeiture practices by establishing the Equitable Sharing Program and Assets Forfeiture Fund at the Department of Justice (DOJ) for asset proceeds. The program allows state and local law enforcement agencies to transfer seized assets associated with federal crimes to federal agencies which then carry out forfeiture proceedings. This process can take place whether the alleged perpetrator has been charged or convicted, and gives local governments an avenue to skirt stricter state laws.

- **Civil Asset Forfeiture Reform Act (CAFRA, 2000):** The Act comprehensively reorganized federal law and consolidated and placed in one location civil asset forfeiture language that had previously been dispersed throughout federal code and customs law. CAFRA expanded forfeiture in new areas, introduced procedural tools and time limits, created an “innocent owner” defense, and resolved ambiguities in federal law that had sparked division among the circuit courts.

- **Obama Administration Action (2015):** U.S. Attorney General Eric Holder launched a comprehensive review of federal asset forfeiture and implemented a new policy prohibiting the federal agency forfeiture, or “adoptions” of assets seized by state and local law enforcement agencies, with a limited public safety exception. A subsequent policy restricting federal seizure of bank accounts to instances where a defendant has been criminally charged or has been found to have engaged in additional criminal activity.

- **Supreme Court Decision in Leonard v. Texas (2017):** The question at the center of this case, is whether civil asset forfeiture laws violate the Due Process Clause. Texas law
enforcement seized a safe containing $200,000 on the grounds it was substantially connected to narcotics sales, and petitioners attempted to use the innocent-owner defense. The Supreme Court ultimately declined to hear the case for procedural reasons, but Justice Thomas issued an opinion criticizing civil forfeiture laws in general.

- **Trump Administration Action (2017):** U.S. Attorney General Jeff Sessions reversed Obama administration policy, allowing the federal government to take all assets associated with federal crimes that have been seized lawfully by state and local governments. The directive also revives the controversial Equitable Sharing Program. In recent months, Sessions also indicated his intention to hire a watchdog for program oversight and accountability.

### State Legislative Trends in Civil Asset Forfeiture

Though developments on the federal level have both tightened and relaxed controls on civil asset forfeiture over time, states have passed their own laws establishing restrictions on the practice. After the CCCA was enacted in 1984, states began passing their own civil asset forfeiture laws, which has led to considerable variation between states and even between types of crimes. Some states have opted to restrict participation in Equitable Sharing by local governments, while others go even further. For example, New Mexico enacted a law in 2015 virtually ending the practice of civil asset forfeiture altogether and reserving forfeiture proceedings for criminal convictions. In 2017, states introduced approximately 100 bills related to civil asset forfeiture, and generally reflect a balance between preventing and diverting materials illegally obtained or involved with criminal enterprises and honoring the due process rights of citizens. In addition to equitable sharing restrictions, the legislation features a range of provisions:

- **Standards of Proof:** These provisions would adjust the standard proof required of law enforcement during legal proceedings for seizure or forfeiture, making it harder to make the case for taking property. For example, Nebraska and North Carolina require a criminal conviction to precede forfeiture actions.

- **Property Owners’ Rights:** Even in situations where law enforcement fails to make the case for property seizure, the process for property owners to retrieve assets is often onerous, expensive, and time consuming. As a result, affected parties referred to as “innocent owners” – individuals who had no involvement with the alleged crime their property was seized for – often opt to forego retrieval. Legislation in states has trended toward clarifying and protecting the rights of property owners by improving this process.

- **Forfeited Funds Allocation:** States have also sought to address where the proceeds from forfeited assets are directed, with a focus on how much, if any, should be given to law enforcement.

- **Oversight and Transparency:** Other legislation details what civil asset forfeiture data and to whom law enforcement agencies report.

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